

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



76-1170

76-1170

In The

UNITED STATES COURT OF APPEALS

For The Second Circuit

B  
P/S

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

WILLIAM R. GOODJOIN,

Defendant-Appellant.

On Appeal from a Judgment of the United States  
District Court for the Southern District of  
New York

APPENDIX

DANIEL L. CARROLL  
Attorney for  
Defendant-Appellant  
330 Madison Avenue  
New York, New York 10017



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Sheet . . . . .	1A
Information . . . . .	3A
Judgment and Probation/Commitment . . . . . Order	5A
Transcript of Suppression Hearing . . . . . on December 18, 1975	6A
Hemmer Direct . . . . .	7A
Hemmer Cross . . . . .	15A
McLain Cross . . . . .	23A
Goodjoin Direct . . . . .	26A
Goodjoin Cross . . . . .	41A
Marquez Direct . . . . .	72A
Marquez Redirect . . . . .	79A
Decision of the Court . . . . .	80A
Transcript of Trial (December 22,23 & 24, 1975). . . . .	87A
Application to Reopen Suppression Hearing . . . . .	87A
Brewer Direct . . . . .	94A
Hickey Direct . . . . .	98A
Hickey Cross . . . . .	101A
Berry Direct . . . . .	105A
Marquez Direct . . . . .	108A
Marquez Cross . . . . .	116A
Charge of the Court . . . . .	118A

Table of Contents (Con't.)

Page

February 7, 1975 Statement . . . . .	145A
(Government Exhibit 12 at Trial)	
Defendant's Bankbook . . . . .	148A
(Government Exhibit 6 at Trial)	

District Office	U. S. CODE SECTION 18:495		OFFENSES <u>Uttering forged U.S. treasury checks.</u>	COUNTS 1&2	MAGR. CASE NO. 75-859 GL
					<input type="checkbox"/> BAIL & RELEASE Denied <input type="checkbox"/> Personal Recog AMT <input type="checkbox"/> Unsecured Bond Set (000) <input type="checkbox"/> Conditional Release S <input type="checkbox"/> 10% Depo <input type="checkbox"/> Surety Bond <input type="checkbox"/> Collateral
U.S. Attorney or Asst. Audrey Strauss, AUSA, (212) 791-1937		Defense <input type="checkbox"/> CJA, <input type="checkbox"/> Ret., <input type="checkbox"/> Waived, <input type="checkbox"/> Self, <input type="checkbox"/> None, <input type="checkbox"/> Other, <input type="checkbox"/> PD, <input type="checkbox"/> CD			<input type="checkbox"/> date <input type="checkbox"/> Bail Not Made <input type="checkbox"/> 3rd Party Custody <input type="checkbox"/> Bail Status Changed (See Docket) <input type="checkbox"/> PSA
ARREST	INDICTMENT	APPOINTMENT	TRIAL	SENTENCE	
<input type="checkbox"/> U.S. Custody or Retention Above Charges	<input type="checkbox"/> High Risk Defn. & Date Design'd  <input type="checkbox"/> Prosecution Deferred	<input type="checkbox"/> Information 11-17-75 Waived <input type="checkbox"/> <input type="checkbox"/> Superseding <input type="checkbox"/> Indict/Info	<input type="checkbox"/> 1st Plea Final Plea  <input type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Nolo <input type="checkbox"/> Guilty	<input type="checkbox"/> Trial Set Err  <input type="checkbox"/> Voir Dire  <input type="checkbox"/> Trial Began  <input type="checkbox"/> Trial Ended	<input type="checkbox"/> Disposition  <input type="checkbox"/> Convicted <input type="checkbox"/> On All Charge <input type="checkbox"/> Acquitted <input type="checkbox"/> On Lesser Dismissed <input type="checkbox"/> Other(s) <input type="checkbox"/> WOP, <input type="checkbox"/> WP <input type="checkbox"/> Nolled/Discontinued*
Search Warrant	Issued Return	DATE INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued Served		PRELIMINARY EXAMINATION OR REMOVAL HEARING <input type="checkbox"/> Waived <input type="checkbox"/> Not Waived	Date Scheduled _____ Date Held _____  <input type="checkbox"/> Intervening Indictment	<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District GJ <input type="checkbox"/> Held to Answer to U. S. District Court
Arrest Warrant			Tape No.	INITIAL/No. 75-859	BOND <input type="checkbox"/> Exonerated <input type="checkbox"/> To Transferre District AT:  Magistrate's Initials ➤ GLG
COMPLAINT	06-10-75 75-859 080A				
OFFENSE (In Complaint)					

\* Show last names and suffix numbers of other defendants on same indictment/information

— DATE —	PROCEEDINGS	V. Excludable Delay			
		(a)	(b)	(c)	(d)
11-17-75	Filed information and waiver of indictment. Deft. present (Atty. present). Court refuses to accept a guilty plea to information. Court directs a not guilty plea be entered. Deft. R.O.R..Assigned to Conner, J. for all purposes..Ward, J.				
11-26-75	Filed following papers recvd. from Magistrate..Complaint, financial affdvt. copy of Mag.docket sheet.				
12-5-75	Filed affdvt. & notice of motion to suppress evidence and for a bill of particulars, and inspection... <del>12-18-75</del> ..Dec.12-18-75 at 10:00a.m.				
12-18-75	Deft. & Atty.present..Suppression hearing held & concluded. Motion to suppress DENIED....Conner, J.				
12-22-75	Deft.(Atty.present)Jury trial begun.				
12-23-75	Trial cont'd.				
12-24-75	Trial cont'd. & concluded verdict deft NOT GUILTY count 1 - GUILTY in Count 2..P.S.I. ordered Sent. adjd to Feb.19-76 at 9:30 a.m. Deft. R.O.R. cont'd.....Conner, J.				
1-7-76	Final transcript of record of proceedings, dated Nov. 17, 1975 — See over —				

DISPOSE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC §3161(h) - "SPEEDY TRIAL ACT".

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
3-4-76	Filed transcript of record of proceedings, dated 12-18-75				
3-16-76	Filed transcript of record of proceedings, dated 12-22, 23, 24, 1975				
3-19-76	Filed Judgment(Atty.Daniel L.Carroll,present)The deft is committed for imprisonment for a period of EIGHTEEN MONTHS, on count 2, pursuant to Ti.18, U.S.Code, Section 4082(b)..Deft to surrender March 29, 1976 at 10 30 A.M., at Room 506. Execution of sentence will be stayed pending Appeal, if any...Deft shall be given counselling and treatment as in the opinion of the Atty.Gen'l. appears advantageous to deft.....Conner,J....Ent.3--19-76....				
3-23-76	Filed notice of appeal from judgment of March 19, 1976..Copy mailed to deft 3328 Kingsland Ave. Bronx,N.Y. and Given to U.S.Att'y's office.				
4-1-76	Filed affdvt. & notice of motion for and order correcting various mistakes in judgment....Ret. 4-8-76---				
4-26-76	Filed transcript of record of proceedings dtd: Mar. 19-76.				
4-8-76	Filed stipulation designating exhibits to be transmitted to U.S.C.A				
4-9-76	Filed AMENDED JUDGMENT..Deft is committed for imprisonment for a period of Up to EIGHTEEN MONTHS, on count 2, pursuant to Ti.18, U.S.C. Section 4082(a)(2).Execution of sentence will be stayed pending appeal, if any. Deft shall be given counselling and treatment as in the opinion of the Atty.Gen'l. appears advantageous to deft.....Conner,J....Ent.4-12-76				
4-8-76	Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.				
4-21-76	Filed memo endorsed on motion filed 4-1-76...Motion Granted..So Ordered.....Conner,J....M/n				

BEST COPY AVAILABLE

FORM USA-33s-116 - IND./INF. - Uttering and Passing Forged Check

AS:js            UNITED STATES DISTRICT COURT  
                  SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-V -

WILLIAM R. GOODJOIN, : 75 Cr. 1121  
: WCC

**Defendant** .

COUNT ONE

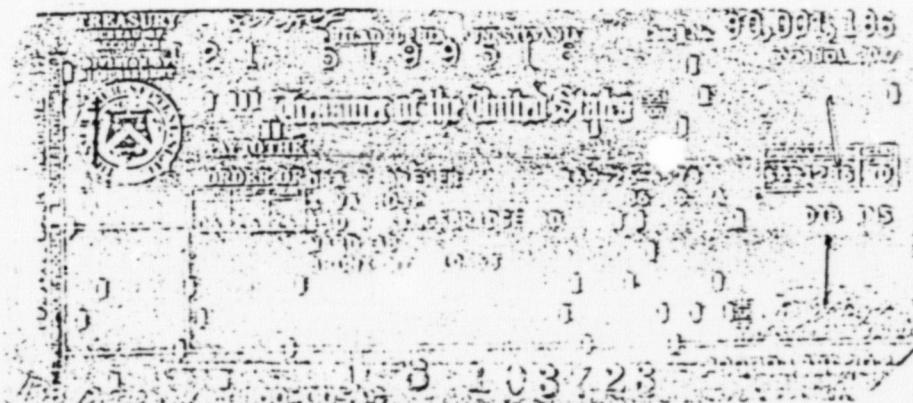
The United States Attorney charges:

On or about the 5th day of July, 1974,

in the Southern District of New York

WILLIAM R. GOODJOHN,

the defendant , unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true and caused to be uttered and published as true, a false, forged and counterfeited writing, namely, the endorsement of the payee on a check, knowing the same to be false, forged and counterfeited, the check being a genuine obligation of the United States, and of the following tenor:



(Title 18, United States Code, Section 495.)

AS:js

COUNT TWO

The United States Attorney further charges:

On or about the 9th day of October, 1974, in the Southern District of New York, WILLIAM R. GOODJOHN, the defendant, unlawfully, wilfully and knowingly and with intent to defraud the United States, uttered and published as true, a false, forged and counterfeited writing, namely, the endorsement of the payee on a check, knowing the same to be false, forged and counterfeited, the check being a genuine obligation of the United States, and of the following tenor:

(Title 18, United States Code, Section 495.)

---

Foreman

---

THOMAS J. CAHILL  
United States Attorney

## United States District Court for

SOUTHERN DISTRICT OF NEW YORK

ALLEGED  
United States of America vs.

DEFENDANT

WILLIAM R. GOODJOIN

DOCKET NO. ➤

75 Crim. 1121

**JUDGMENT AND PROBATION/COMMITMENT ORDER**In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH      DAY      YEAR  
April      9      1976

COUNSEL

 WITHOUT COUNSEL      However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel. WITH COUNSEL      Daniel L. Carroll, Esq. \_\_\_\_\_  
(Name of counsel)  
Pursuant to Rule 36 F.R.Civ.P., the Judgment dated March 19, 1976 is  
amended to the extent indicated below.

PLEA

 GUILTY, and the court being satisfied that       NOLO CONTENDERE,       NOT GUILTY  
there is a factual basis for the plea.FINDING &  
JUDGMENTDefendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly  
and with intent to defraud the United States, uttered and published as  
true, a false, forged and counterfeited writing, namely, the endorse-  
ment of the payee on a check, knowing the same to be false, forged  
and counterfeited, the check being a genuine obligation of the United  
States.  
(Title 18, U.S. Code, Section 495.)SENTENCE  
OR  
PROBATION  
ORDERThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary  
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is  
hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of  
Up to EIGHTEEN (18) MONTHS, on Count 2, pursuant to Title 18, U.S.  
Code, Section 4062(a)(2).SPECIAL  
CONDITIONS  
OF  
PROBATIONDefendant shall be given counselling and treatment as in the  
opinion of the Attorney General appears advantageous to defendant.ADDITIONAL  
CONDITIONS  
OF  
PROBATIONIn addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the  
reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at  
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke  
probation for a violation occurring during the probation period.COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.SIGNED BY  
 U.S. District Judge  
 U.S. MagistrateDocketed  
4-12-76

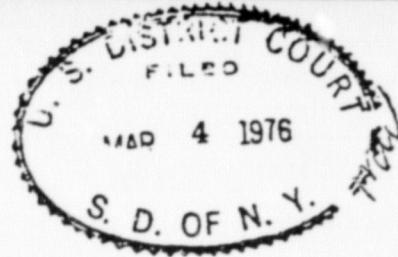
William C. Conner

Date April 9, 1976

CERTIFIED AS A TRUE COPY ON  
THIS DATE 11/1/76By CLERK  
DEPUTY

1 Q:mg

III 1163



2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x

5 UNITED STATES OF AMERICA, :  
v. : 75 Cr. 1121

6 WILLIAM R. GOODJOIN, :  
Defendant. :  
9 ----- x  
10 Before:  
11 HON. WILLIAM C. CONNER,  
12 District Judge  
13 New York, New York  
14 December 18, 1975  
10:00 a.m.  
15 APPEARANCES:  
16 JERRY L. SIEGEL, Esq.,  
17 DON D. BUCHWALD, Esq.,  
Assistant United States Attorneys  
18 DANIEL L. CARROLL, Esq.,  
Attorney for the Defendant.  
20  
21  
22  
23  
24  
25

1 Q:mg

Hemmer-direct

6

2 contact?

3 A I accompanied another agent, Dario Marquez, to  
4 the vicinity of 149th Street and West Kingsbridge Road in  
5 the Bronx, to a place called Hickey's Bar.

6 At that time we were to wait outside for an  
7 individual who had called Agent Marquez and identified  
8 himself --

9 MR. CARROLL: Objection.

10 THE COURT: Speak a little more slowly and dis-  
11 tinctly.

12 MR. CARROLL: I object to the statement that he  
13 was to wait. I don't know who told him to wait. There  
14 is no evidence of that.

15 THE COURT: He is stating what his understanding  
16 was.

17 Is that your understanding, that you were to wait  
18 at this place?

19 THE WITNESS: We were to wait for an individual  
20 that had called Agent Marquez.

21 THE COURT: Overruled.

22 A We were to wait for an individual who had called  
23 Agent Marquez at our office on the telephone, identifying  
24 himself as a Will Goodjoin, describing his apparel for that  
25 day.

1 Q:mg

Hemmer-direct

7

2 At this time we went to that location, stayed  
3 outside on the street for a period of time.

4 No individual fitting this description appeared  
5 at that corner, at which point myself and Agent Marquez  
6 entered Hickey's Bar on West Kingsbridge, went in and sat  
7 at the bar.

8 At this time we sat there and looked around the  
9 bar for an individual fitting the description given to  
10 Agent Marquez on the telephone.

11 After a period of time Agent Marquez got up and  
12 went to the opposite end of the bar from where we were sit-  
13 ting and asked the individuals seated there if any of them  
14 was in fact a William Goodjoin.

15 At this time Mr. Goodjoin identified himself as  
16 Bill Goodjoin, following which Mr. Goodjoin, Agent Marquez  
17 and myself proceeded to an adjacent room in Hickey's Bar  
18 and sat at a table.

19 At this time we conversed for a few minutes.  
20 Mr. Goodjoin explained to us what he wanted to tell us over  
21 the telephone, what information he was going to offer.

22 At this time we asked Mr. Goodjoin if he would agree  
23 to come down to our office to be questioned further.

24 At this time he agreed to such.

25 We left Hickey's Bar, got into an official Government

1 Q:mg

Hemmer-direct

8

2 car driven by Agent Marquez and the three of us proceeded  
3 down to our office in Lower Manhattan.

4 Q What happened when you got to the office?

5 A At our office Mr. Goodjoin was questioned. He  
6 was advised of his constitutional rights as set forth in  
7 a Secret Service Form No. 1737.

8 He gave a statement.

9 He was questioned concerning the statement.

10 This statement was eventually put on paper by  
11 myself. He read the statement over. He signed the state-  
12 ment. The statement was witnessed by myself and Agent  
13 Marquez.

14 After we were finished talking to Mr. Goodjoin, we  
15 then transported Mr. Goodjoin to his residence in the  
16 Bronx.

17 At that time Mr. Goodjoin went into the house,  
18 we went in with him, we met a member of his family.  
19 Mr. Goodjoin produced a bank book, a savings book, I be-  
20 lieve, Knickerbocker Savings Bank.

21 After that he again came outside with us to the  
22 vehicle, or vessel for a few minutes, voluntarily gave us  
23 the bank book to take back to the office with us, and at  
24 that time on that date, that was the end of our experience  
25 with Mr. Goodjoin.

1 Q:mg

Hemmer-direct

9

2           Q     I show you what has been marked Government's  
3     Exhibit 1 for identification and ask if you can identify  
4     that.

5           A     Yes, I can.

6           Q     What is it?

7           A     This is a United States Secret Service Form No.  
8     1737. What it is, is a warning and consent to speak, and  
9     there is a statement here of rights. It is signed by Mr.  
10    Goodjoin, witnessed by myself and Agent Marquez.

11          Q     Can you explain briefly for the Court how that  
12    statement or how the form you described was used at the  
13    office to which you previously testified?

14          A     This form was presented to Mr. Goodjoin. It was  
15    read by Mr. Goodjoin. Mr. Goodjoin was asked if he had  
16    any question as to its contents, whatever the phraseology  
17    on the paper. He read it and he expressed to myself and  
18    Agent Marquez that he understood the meaning of the words  
19    on the paper and he signed it.

20               He then read the waiver which appears underneath  
21    the warning rights on this form. He also expressed to us  
22    at that time that he understood it. He had no questions  
23    concerning it. He signed it a second time, also, at which  
24    time Mr. Marquez, Agent Marquez signed as a witness and my-  
25    self, I co-signed as a witness.

1 Q:mg

Hemmer-direct

13

2 with us.

3                   He did not want to stay in the bar at that time  
4 because he felt that our presence there with other people  
5 that he knew, I don't know, he wanted to leave the bar  
6 and speak some place else, in other words.

7                   Q     How would you describe his speech at the time?

8                   A     It was apparently normal.

9                   Q     How would you describe his demeanor at the office  
10 at the time he was advised of his rights and made the  
11 statement?

12                  A     Mr. Goodjoin, as far as I could tell, was  
13 completely aware of what was happening. Like I say he was  
14 sitting up straight. He had no trouble comprehending the  
15 proceedings, what was going on.

16                  MR. CARROLL: I object to the statement as to  
17 what he had no trouble doing.

18                  THE COURT: Read the question and partial answer.

19                  (Record read)

20                  THE COURT: I will accept that with the opening  
21 qualification that this was as far as the witness could  
22 tell.

23                  Go ahead, did you want to complete your answer?

24                  THE WITNESS: Mr. Goodjoin had, as far as I could  
25 tell, he was completely aware of what was happening.

1 Q:mg

Hemmer-direct

14

2 Q What if anything did you notice about his speech?

3 A His speech appeared normal.

4 Q What if anything did you notice about his co-  
ordination, his motor ability?6 A He had no problems with his motor ability. As  
7 far as whatever motor ability was evidenced was the signing  
8 of the name and his speaking and talking.9 Q You previously testified that after leaving the  
10 office that day you took the defendant home.11 I show you now what is marked as Government's  
12 Exhibit 4 for identification and ask if you can identify  
13 that.14 A Yes, this is a savings book, Knickerbocker Federal  
15 Savings, which was given to us by Mr. Goodjoin the evening  
16 that we brought him home.17 MR. SIEGEL: I offer Government Exhibit 4 in  
18 evidence at this time, your Honor.

19 MR. CARROLL: No objection, your Honor.

xx

20 (Government Exhibit 4 received in evidence)

21 Q Prior to the incident which you described on  
22 February 7, at which time the defendant gave the statements  
23 and materials in question, had you ever had any previous  
24 contact with this individual.

25 A Yes, I had once previously.

1 Q:mg

Hemmer-direct

15

2 Q Could you describe the circumstances of that  
3 contact?

4 A The circumstances were as such: Myself and  
5 Marquez were working in the Bronx. We were called on the  
6 air in our car by another agent who was also at the Bronx  
7 at that time. This agent asked Marquez and myself to meet  
8 him at a specific location, Park Avenue in the Bronx. We  
9 did so.

10 At this time I spoke to the agent, Agent McIntosh,  
11 who stated that Mr. Goodjoin had called the office and had  
12 asked Agent McIntosh to come up to Hickey's Bar on West  
13 Kingsbridge Road and meet him, he had something to discuss  
14 with him.

15 Agent McIntosh did so, picked up Mr. Goodjoin,  
16 was not having too much making headway as far as what  
17 Mr. Goodjoin was trying to convey to him.

18 Since myself and Marquez worked the Bronx for a  
19 period of time he wanted us in on it inasmuch to maybe  
20 either-- possibly we knew what Mr. Goodjoin was speaking  
21 about or had some idea of what he was trying to convey to  
22 Agent McIntosh.

23 At this time I then spoke to Mr. Goodjoin.  
24 Mr. Goodjoin at that time was-- I can't be specific because  
25 he wasnot making too much sense at the time.

1 Q:mg

Hemmer-direct

16

2 He basically was trying to convey to us that he  
3 had been given some checks by other individuals. It was  
4 his function to cash these checks and he was supposed to  
5 meet these individuals that evening at a basketball court  
6 on Park Avenue, I believe it is somewhere in the 180's,  
7 at which time he was supposed to divvy up the proceeds of the  
8 checks, I guess, between himself and these other individ-  
9 uals.

10 I could not verify that with Mr. Goodjoin at that  
11 time since he did not have identification. He could not  
12 prove to us that he was William Goodjoin except by word.

13 It was apparent that Mr. Goodjoin had been drink-  
14 ing for a while. His speech was slurred. He was having  
15 problems getting his thoughts out together. He smelled of  
16 alcohol and he had to get out of the car and urinate.

17 Q About when was this incident?

18 A This was approximately a month, perhaps two,  
19 before the February 7th date.

20 Q Was the individual you saw at that time the  
21 individual who you later saw on February 7th?

22 A On February 7th I realized after speaking to  
23 him that this was the same individual that we had met pre-  
24 viously a month or so before.

25 Q How would you compare his demeanor on the two

1 Q:mg

Hemmer-cross

23

2 people were expecting.

3 Q Did he identify these people to you?

4 A He identified a person named Dunn and gave a de-  
5 scription.

6 Q What description did he give of Dunn?

7 A He gave a description of a middle-aged black  
8 male, heavyset, fairly tall, well-dressed, who would not  
9 look like one of the kids playing basketball.10 Q I thought that you testified on direct, and I  
11 may be wrong, that nobody showed up at the basketball  
12 court?13 A Not the people fitting the description he gave  
14 us.

15 Q So you did go to the basketball court?

16 A Yes. The basketball court was approximately a  
17 block, maybe less, away.18 Q And did Mr. Goodjoin go to the basketball court  
19 with you?

20 A No.

21 Q When you went to the basketball court, did he  
22 leave you?

23 A No, he was with Agent McIntosh.

24 Q How long did you wait at the basketball court?

25 A I would say the whole incident, my meeting with

1 Q:mg

Hemmer-cross

24

2 him at that location and waiting for these people to appear  
3 was probably no more than half an hour, 45 minutes at  
4 the most.

5 Q When you left did you leave Mr. Goodjoin or the  
6 person you were speaking to on the street?

7 A I left him with Agent McIntosh. I don't know  
8 what Agent McIntosh did with him.

9 Q Going up to February 7, did the call to your  
10 office come to you or did it come to Agent Hemmer?

11 A I am Agent Hemmer.

12 Q Agent Marquez.

13 A It came to Agent Marquez.

14 Q Do you recall approximately what time of day  
15 that was?

16 A No, Marquez told me about the phone call. In  
17 other words, I did not receive it myself.

18 Q What time of day did Agent Marquez tell you about  
19 the phone call?

20 A I believe it was the afternoon. I believe we got  
21 up to Hickey's Bar, I would say between three and four,  
22 something like that.

23 Q Some time in early or mid-afternoon?

24 A Right.

25 Q When you got to Hickey's Bar you indicated in

1 Q:mg

Hemmer-cross

25

2 your testimony that you did not immediately identify the  
3 person who had called you?

4 A Right.

5 Q You sat at the bar?

6 A Yes.

7 Q Did you have a drink?

8 A Yes, we did.

9 Q What did you have to drink?

10 A I had a beer.

11 Q Did Agent Marquez have a beer?

12 A Yes.

13 Q Did you sit in the back room at all before you  
14 met Mr. Goodjoin?

15 A No.

16 Q Was Mr. Goodjoin drinking at the time?

17 A Yes, he was.

18 Q Do you recall what he was drinking?

19 A It was a mixed drink. I don't recall if it was  
20 Scotch or rye.

21 Q Did you ask him what he was drinking?

22 A Probably at the time we did ask.

23 Q You don't recall what he told you he was drink-  
24 ing?

25 A No.

1 O:mg

Hemmer-cross

26

2 Q Do you recall what size glass it was?

3 A It was not a beer glass, probably an eight-ounce.

4 Q One of the eight-ounce glasses that normally a  
5 drink would come in?

6 A Right. About an eight-ounce I would imagine.

7 Q Did Mr. Goodjoin bring his drink back to the  
8 table with him?

9 A Yes.

10 Q Did you ask him how many drinks he had had that  
11 day?12 A I don't believe so. I don't believe I did. Maybe  
13 Marquez did.

14 Q You don't know?

15 A No, I don't believe so.

16 Q Did he have another drink?

17 A I don't think so. I think the drink that he  
18 brought to the table was the last drink he had because  
19 we were not in the bar no longer than maybe ten minutes.20 Q How full was the drink when he brought it back  
21 to the table?

22 A I believe it was more than half full.

23 Q But you don't recall asking him what he was drink-  
24 ing?

25 A No, I don't.

1 Q:mg

Hemmer-cross

27

2 Q When you left the bar did you go anywhere other  
3 than back to your office?

4 A No, we went right to the office.

5 Q Straight to the office.

6 Did you search Mr. Goodjoin at all?

7 A I believe he may have been patted down just to  
8 see if he had a weapon. I can't -- truthfully, I don't  
9 remember.

10 Q Did you handcuff him?

11 A No.

12 Q Where did he sit in the car in reference to you  
13 and Agent Marquez?

14 A I can't recall. He probably sat in the back  
15 seat, Marquez and myself in the front seat.

16 Q Approximately what time did you get back to your  
17 office?

18 A Probably between 4:30 and 5:00. Approximately.

19 Q You mentioned in your direct testimony or you  
20 stated that Mr. Goodjoin was free to leave at any time  
21 once you got back to your office?

22 A Mr. Goodjoin voluntarily accompanied us.

23 Q You also stated he could leave any time he wanted  
24 to?

25 A Yes.

1 Q:mg

Hemmer-cross

28

2 Q Did you actually tell him, "You can leave any  
3 time you want to, Mr. Goodjoin"?

4 A I don't believe so.

5 Q Did Agent Marquez tell him that?

6 A I don't believe so but I believe prior to us going  
7 to the office he was asked if he was agreeable to coming  
8 with us.

9 Q And he said yes?

10 A He said yes.

11 Q I would like you to tell me everything you re-  
12 call Mr. Goodjoin saying at Hickey's Bar.

13 A At Hickey's Bar the conversation did not extend  
14 too long. Basically what Mr. Goodjoin told us was about  
15 these checks. He knew a person, this, that, and the other  
16 thing, checks he had cashed. He had wanted to straighten  
17 it out, in other words. That is, with us. That was the  
18 reason he contacted Marquez at the office.

19 Q Did he finish his drink before he left?

20 A Yes, he did.

21 Q How full was it when you arrived?

22 A I imagine it was a little over half full.

23 Q Was there any conversation between Hickey's and  
24 when you got back to your office?

25 A In the car?

1 Q:mg

Hemmer-cross

29

2 Q Yes, with Mr. Goodjoin.

3 A I don't believe there was much conversation per-  
4 taining to what he wanted to tell us. There was conversa-  
5 tion I believe of a personal nature as to "How old are you?  
6 Do you have a job?" this, that, and the other thing, per-  
7 sonal questions.

8 Q At any time during that day did you ask Mr.  
9 Goodjoin how much he had had to drink that day?

10 A No.

11 Q Even when you recalled that he was the person  
12 you had seen a month or two before in such an inebriated  
13 condition, you didn't ask him how much he had to drink?

14 A The question of his drinking came up afterwards.

15 Q What do you mean, "afterwards"?

16 A On the way home, we were bringing him home from  
17 the office, he stopped for a bottle or he asked us if we  
18 would stop for a bottle.

19 Q And you stopped for a bottle?

20 A We stopped and he went in and purchased the  
21 bottle.

22 Q What did he purchase, do you recall?

23 A I don't recall.

24 Q Did he offer you a drink?

25 A I believe so.

1 Q:mg

Hemmer-cross

30

2 Q Did he open the bottle as soon as he got back  
3 into the car?

4 A Yes.

5 Q He began to drink?

6 A Yes.

7 Q Straight from the bottle?

8 A Yes. At that time we questioned his need for  
9 the bottle.

10 Q What did he tell you?

11 A He said he was a social drinker and he did not  
12 have any alcoholic problems.

13 Q Did you at that time ask him how much he had to  
14 drink that day?

15 A No.

16 THE COURT: He repeatedly said that.

17 Q Who did the questioning of Mr. Goodjoin when  
18 you got back to the office on February 7th?

19 A Both of us questioned him, primarily Marquez, and  
20 I typed the statement but I was present during the question-  
21 ing and I would inadvertently ask questions myself. If I  
22 didn't understand what I was trying to put on paper-

23 Q Did you at any time suggest answers to Mr.  
24 Goodjoin?

25 A No, Mr. Goodjoin told us his story. We just tried

1 Q:mg

McLain-cross

52

2 you on June 10, did you not?

3 A I had both checks with me.

4 Q Does it indicate on the back when the endorsement  
5 was--

6 A Which check?

7 Q The first check you read, I believe Exhibit 7.

8 A The Brewer check?

9 Q Yes. Could you indicate when that was cashed  
10 or endorsed?

11 A No. Not that I can see.

12 Q Is it not a fact that that check was recorded  
13 stolen in January of 1975 or missing by Aura Brewer?14 MR. SIEGEL: I object. I don't see the relevance  
15 of this line of inquiry to this proceeding at all.16 MR. CARROLL: The relevance is that in response  
17 to one of your Honor's questions it was suggested that the  
18 only place that the \$1286 figure could have been obtained  
19 was from Mr. Goodjoin.20 THE COURT: I asked whether or not so far as he  
21 knew the check could come into the possession of the Secret  
22 Service or if they had any knowledge about it.23 I think the fact that it was reported missing  
24 in January 1975 is highly irrelevant to that.

25 MR. SIEGEL: I believe the statement was-- well,

1 Q:mg

McLain-cross

53

2 the statement was in the possession of the Government at  
3 this time so the figure would have been known in any  
4 event.

5 THE COURT: Presumably at the time the check  
6 was recorded missing the amount was known. I am not sure  
7 of that. Of course, I don't know whether it wa- in fact  
8 reported missing. I only have that from counsel so far.  
9 I don't have it from the witness.

10 Do you know whether the check was reported  
11 missing in January of 1975?

12 THE WITNESS: No, sir, I don't know the exact  
13 date.

14 MR. CARROLL: Your Honor, I would like to show  
15 the witness a document and ask him if he ever saw the  
16 document before. This is marked as Government Exhibit 3507.

17 THE COURT: 35 what?

18 MR. CARROLL: 3507.

19 THE COURT: Thank you.

20 That is the claim form.

21 MR. SIEGEL: We will stipulate the form is what  
22 it is and it is dated--

23 MR. CARROLL: The claim form, the earliest date  
24 December 30, 1974 and it is a claim for for a check where  
25 the payee was Aura Brewer, in the amount of \$1286.70.

1 Q:mg

McLain-cross

54

xx 2 (Government's Exhibit 3507 marked for iden-  
3 tification now received in evidence as Defendant's  
4 Exhibit A.)

5 MR. CARROLL: The Government has agreed to stipu-  
6 late that Government Exhibit 7, which is the \$1286 check  
7 was cashed in July of 1975.

8 MR. BUCHWALD: July 5, I think is the date.

9 MR. CARROL : July 5, 1974.

10 THE COURT: All right.

11 Q Did you have the original of that check at any  
12 point in time, Mr. McLain?

13 A Did I have the original?

14 Q Yes.

15 A No.

16 Q Were you aware of the fact that it had been  
17 cashed in July?

18 A Of 1974?

19 Q Yes.

20 A Yes.

21 Q When you were reading this statement which is  
22 Government Exhibit 2 to Mr. Goodjoin on June 10th, did  
23 you suggest to him that perhaps the date appearing in  
24 the first paragraph of the first page, on or about October  
25 1974, was incorrect and should be July?

1 jqh 5 Goodjoin-direct

2 THE COURT: Mr. Carroll.

3 MR. CARROLL: I call the defendant to the stand,  
4 your Honor.

5  
6 W I L L I A M R. G O O D J O I N, called as a witness,  
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CARROLL:

10 Q Mr. Goodjoin, do you recall the events that  
11 occurred on February 7, 1975?

12 A Yes, I do.

13 Q To the best of your recollection I would like  
14 you to start in the morning when you woke up and tell me  
15 your activities for that day as best you can recall them.

16 A Well, I got up in the morning about 7, showered,  
17 shaved, ate and then I placed a phone call to a Mike Hickey  
18 at Hickey's Bar and I think it was about a Friday or so. I  
19 asked him if he could loan me a couple of dollars to get to  
20 school with until I pick up my check from school.

21 Q You were going to school that day?

22 A Yes, sir, I was.

23 Q How did you know Mr. Hickey?

24 A Well, I used to work over at the Bronx Veterans  
25 Hospital and everybody would go into Hickey's Bar to cash

1 jqh 6 Goodjoin-direct

2 their checks on pay day and that is how I got to know him.

3 Q Did you patronize Hickey's Bar fairly regularly?

4 A Yes, we would go over there every day on our  
5 breaks and lunch hours.

6 Q What did Mr. Hickey say to you?

7 A Well, he said to come up because he had a problem  
8 with the bank over a check that was cashed there.

9 Q Did he tell you what check it was?

10 A He said it was a large sum.

11 Q Do you recall if he mentioned the amount to you  
12 at all?

13 A No, because the only checks that I would cash  
14 there was mine and I cashed one other check there that  
15 was not mine that belonged to someone else and he told  
16 me about that over the phone.

17 Q What did he tell you?

18 A He said he wanted to speak to me. He asked me what  
19 time could I be up there and I said I will try to get up  
20 there as quickly as possible and I had a bottle of wine  
21 at home and I drank there before I left home or on the way  
22 over and I got there about 9 o'clock.

23 Q To Hickey's Bar?

24 A Yes.

25 Q Was Hickey there?

63

1 || jgh 7 Goodjoin-direct

2 A No, he was not there. But his relief bartender,  
3 Pat, was there.

4 Q Did Hickey on the telephone tell you what he  
5 wanted to talk to you about in reference to the check?

A He said it came back.

7 Q Did he say anything else?

8           A     He said he wanted to see me and if I can find  
9           a Mr. Sumpter he wanted to see him too.

Q What happened when you got to Hickey's?

11 A I got there and he was not there but Pat was  
12 there.

13 Q Who is Pat?

14 A Pat is the relief bartender that Mike works with  
15 and so I asked Pat do you know what Mike wanted me for  
16 and he said he didn't know. I said did he leave anything  
17 for me and I still had about an hour before I had to be  
18 at school and he poured me a couple of shots before I left  
19 and then when I got the money from him, about two or three  
20 dollars, I went around the corner and bought me another  
21 liquor bottle to walk over to the school with.

Q How far is the school from Hickey's?

A About a 15-minute walk.

Q What were you going to school for?

A I was taking up nursing in school.

1 ||| jqh 8 Goodjoin-direct

2 Q But on that day what was the purpose of your going  
3 to school?

4           A     Well, mostly the main reason was because of the  
5     checks. We worked for the Public Service Career Program  
6     and they sent us to school and we worked in hospitals during  
7     the summer. From there as long as we were in school they  
8     ould pay us \$100 a week.

Q Did you pick up your check in school?

10 A Yes, I did.

11 Q Then what did you do?

12           A     Well, we walked down -- me and a friend of mine --  
13           we got a ride down to Jerome Avenue that day and we went  
14           by the check cashing place there where all the veterans  
15           cash their checks from school and we went across the  
16           street and bought some Bacardi rum.

Q This is after you cashed your check?

18 A Yes.

Q     About what time of day was it then, do you remember?

20 A It was early, about 10:30, maybe a little later  
21 than that.

22 Q Where did you go or what did you do after you  
23 bought the bottle of Bacardi?

24 A This friend of mine had to go down to Manhattan  
25 and he asked me if I wanted to go and I said no because

1 || i gh 9 Goodjoin-direct

2 I had to take care of some business. He drank half and  
3 I drank half.

4           Q     What was this friend's name?

5 A Allie McWillie.

6 O Mr. McWillie left to go somewhere?

7 A Yes, he did.

Q Where did you drink this bottle, where were you?

A Right underneath the el subway station.

10 Q Then where did you go?

11 A I started walking from Burnside Avenue up to  
12 Kingsbridge Road and under by Jerome Avenue.

13 O Where were you going or where did you go?

14           A       I wanted    pay Pat back for the \$2 and then for  
15           the drinks that I bought there. Then I wanted to wait around  
16           to see if Hickey might come back in about lunchtime to see  
17           if anybody was there for a check to cash or anything and  
18           he usually comes back about noon.

19 O Did you get back to Hickey's?

20 A Yes.

Q. What did you do when you got back to Hickey's?

22 A I paid off Pat and then I had a couple of more  
23 drinks and at about that time it was about lunchtime for  
24 the hospital workers that worked in housekeeping and so  
25 we got up there and we had some more to drink.

1 || jqh 10 Goodjoin-direct

2 Q You met them, some friends from the hospital?

3 A Yes, right.

4 Q Did you stay in Hickey's?

5           A.     No, we were outside on the street because they  
6     don't eat on their lunch hour, they drink.

7 Q You used to work at the hospital?

8 A Yes.

Q With the same group of people?

10 A Yes.

11 Q I assume they went back to work after the lunch  
12 hour was over?

13 A Yes.

Q What did you do?

15 A After that I went back into Hickey's.

16 Q What did you do when you went back to Hickey's?

17 A I sat at the end of the bar where I usually sat  
18 and I am worried about what Mike is going to say to me because  
19 maybe it is a bad check or something. Then I placed a phone  
20 call to the FBI to find out who do I see about stolen govern-  
21 ment checks. They said it was not their department, to call  
22 the U.S. Secret Service Treasury Department and then I got the  
23 phone book and I looked up the number for them and I  
24 called them.

Q How did you know to ask about stolen government

1 jqh 11 Goodjoin-direct

2 || checks?

3 A Excuse me?

4 Q How did you know to ask about stolen government  
5 checks?

6           A     The person I talked to from the FBI said that  
7     the Secret Service Treasury handles that.

8 Q Did you know at that point that the check had  
9 been stolen?

10 A No, not at that point.

11 Q Hickey just told you to come back, there is  
12 something wrong?

13 A Right.

14 Q Did you call the Secret Service then?

15 A Yes, I did. I spoke with Agent Hemmer or Marquez,  
16 I mean.

17 Q What did you tell Agent Marquez?

18           A     Well, I told him, I asked him what is the process  
19         you go through of stolen government checks and he asked  
20         where I was and I told him I would be at Hickey's and what  
21         I would be dressed like and where I would be sitting at, in  
22         the back.

23 Q What did you do after you talked to Agent Marquez?

24           A     Well, I went back to the bar and Pat was kind  
25           of generous and he poured me a chaser glass full of rum

1       jqh 12                   Goodjoin-direct

2       Q     What do you mean a chase glass full?

3       A     About an 8-ounce glass and he filled it up with  
4       rum. I just sat there reading the comics in the paper  
5       until the two agents showed up.

6       Q     How soon did they show up after your call?

7       A     A little over an hour later

8       Q     Did you have another drink?

9       A     Yes, I had about two or three before they came.

10      Q     Two or three what?

11      A     The same things.

12      THE COURT: You mean two or three 8-ounce glasses  
13     of rum?

14      THE WITNESS: Yes, sir.

15      Q     What happened when Agent Marquez and Agent Hemmer  
16     came to Hickey's?

17      A     Well, I was sitting in the back and I had my  
18     fourth one then and it was going down slowly and he asked  
19     Bill and I said yes. And he said can I talk to you. We went  
20     into the back over where the booths are where they eat  
21     sandwiches and whatnot back there and there we sat down with  
22     the other agent there and they were drinking beer and I had  
23     mine and they said let's go and they finished off their  
24     beer and I finished off mine and we went outside.

25      Q     Did you ever talk to them in the back room at all?

1        jqh 13

Goodjoin-direct

2            A      I asked them for their identification to prove  
3                          to me because I didn't know who the hell they were. Then they  
4                          says well, do you have any identification proving who you  
5                          are and I showed them my picture and school ID and whatnot,  
6                          you know.

7            Q      Where did you go after you left Hickey's?  
8                          You left Hickey's with the agents?

9            A      Yes.

10           Q      Where did you go then?

11           A      They were parked on Sedgwick Avenue going south  
12                          but the car was pointing north. They were parked on the  
13                          south side on Sedgwick Avenue just off Kingsbridge Road  
14                          and we walked over there and they patted me down and  
15                          we got in their car.

16           THE COURT: You say the car was parked headed south  
17                          on Sedgwick Avenue?

18           THE WITNESS: Parked headed north but on the  
19                          south side.

20           THE COURT: All right.

21           A      We got into the car and they started asking  
22                          me questions and whatnot.

23           Q      Do you remember what they were asking you at all?

24           A      Well, yes. They asked me, you know, what did  
5                          I want to talk to them about and I said about some stolen

1 jgh 14 Goodjoin-direct  
2 government checks. At that time I think I got a letter  
3 from the bank stating that the check, one check that I  
4 had deposited in the bank has been reported stolen and I  
5 said what can I do about this. I called them up and like  
6 that day, and they came.

7 Q What happened after you went out to the car?

8 A They asked me certain questions about where I  
9 lived and whatnot, where I work at. I told them I was  
10 a student and then they asked me do you know who you get the  
11 checks from and I said yes, a fellow named Dunn. He works  
12 over at the hospital in the mail room. He said do you  
13 think he is there today and I said he is probably  
14 there every day but I haven't been in the hospital yet  
15 so I would not know. Then we drove down to I think Heath  
16 Avenue, there in a parking lot where Agent Marquez put  
17 an electronic bug around my waist and told me to go back  
18 into the hospital to see if Mr. Dunn was there to see if I  
19 can get a check or something so they could have something on  
20 him. I did so but I went in and walked around in the mail  
21 room and he didn't have anything so I just went on and  
22 bought some cigarettes from inside and came back out. From  
23 there they took me downtown.

24 Q How did you feel at that point?

25 A I was flying. I was not touching the ground. I was

1 jqh 15 Goodjoin-direct

2 pretty well far gone.

3 Q Do you remember them taking you down to their  
4 office, Agent Marquez and Hemmer?

5 A Yes, I remember the ride and whatnot down there.

6 Q Do you remember them questioning you at the office?

7 A Yes, I remember them questioning me.

8 Q Do you remember any questions they asked of you?

9 A Not particularly because one would ask me a  
10 question and before I could answer one was like throwing  
11 words out to me that like, you know, make it seem like  
12 I am making the statement and like I was so -- I was feeling  
13 kind of mellow and like I said I don't care, go ahead,  
14 right, it happened like that.

15 Q Did you sign anything down there, do you remember?

16 A I really don't remember signing anything but--

17 Q Let me show you Government Exhibit 1. Do you  
18 remember signing that document on February 7th?

19 A That is my signature but I don't remember signing  
20 it.

21 Q Do you notice anything peculiar about the  
22 signature?

23 A Yes, I only write my name like that especially  
24 if I am drunk and my hand is not steady or anything.

25 THE COURT: Your hand is never that steady?

1 jgh 16

Goodjoin-direct

2 THE WITNESS: When I am drunk it is always like this  
3 it is never actually steady when I am drunk.

4 THE WITNESS: I see.

5 Q Do you have anything with your signature on it  
6 that you signed when you weren't drunk?

7 A Yes, I have my library card, Medicaid card.

8 Q Can you show it to us please.

9 Is this your library card here?

10 A Yes.

11 Q When did you sign that?

12 A A couple of years ago, I think.

13 Q Do you remember if you were sober or drunk?

14 A I was sober.

15 Q Is this your signature that appears when you  
16 sign something when you are sober?

17 A Yes, it is.

18 MR. CARROLL: I offer this in evidence, your  
19 Honor.

20 MR. SIEGEL: The government has no objection.

xx 21 '(Defendant Exhibits B and C received in evidence.)

22 Q I show you the three-page statement that was  
23 marked as Government Exhibit 2. Do you remember signing  
24 that document?

25 A To tell you the truth I don't remember signing

1 jqh 17 Goodjoin-direct

2 any of them.

3 Q Does that look like your signature?

4 A When I am gassed, it does.

5 Q Do you deny that you signed it?

6 A I have denied it -- it is my signature.

7 Q It is your signature?

8 A Yes.

9 Q You did sign it. You just don't remember signing  
10 it?

11 A Yes, sir, right.

12 Q Do you remember how long you were at the agent's  
13 office? .14 A Yes, it was quite a long time because when we  
15 got there it was getting dark and when I left there  
16 it was dark.17 Q Was there a lapse of time between when they  
18 questioned you and when they showed you anything?

19 A Yes.

20 MR. SIEGEL: Objection to the question.

21 Q Did they show you anything after they questioned  
22 you?23 A No, they just put some papers down there and  
24 that was it, in front of me.

25 Q They showed you some papers?

1       jqh 18                   Goodjoin-direct

2       A     Yes, that is all.

3       Q     Did you wait any period of time between when they  
4       were questioning and when they put the papers down in front  
5       of you?

6       A     They said read them.

7       Q     Did you read them?

8       A     I could not see them.

9       Q     Did you look at them?

10      A     Yes, I looked at them but I could not make out  
11       the words on them.

12      Q     What happened then, did you leave their office?

13      A     Yes, they drove me home.

14      Q     Up to that point had they asked you how much  
15       you had been drinking?

16      A     Yes, when I first -- when they first met me  
17       at the bar they asked how much I had. I said a couple of  
18       bottles. Then we went outside.

19      Q     Did they ask you what you were drinking when  
20       they got to Hickey's?

21      A     No, they didn't.

22      Q     Did they take you home then?

23      A     Yes, but we did make a stop on the way home.

24      Q     Did you ask to make a stop?

25      A     Yes, I did.

1 jqh 19 Goodjoin-direct

2 Q What did you ask him?

3 A I asked them if they could stop by the first  
4 liquor store they see in the Bronx but since we was on  
5 the Deegan he had to get off on Fordham and I knew where  
6 there was a liquor store on Fordham Road.

7 Q Did you go in and buy a bottle?

8 A Yes, I did.

9 Q What did you buy?

10 A A point of scotch.

11 Q Did you drink it?

12 A I drank half of it before I even got out of the  
13 car.

14 Q Did you offer them a drink?

15 A Yes.

16 Q Did they say anything to you when you offered  
17 them a drink?

18 A Yes, they asked me how often do I drink like  
19 this and I said every time I have money.

20 Q Every time you have money?

21 A Yes.

22 Q Are you still drinking like that?

23 A No, sir, I don't.

24 Q Have you tried to find help?

25 A Yes, sir.

1 qb-16

Goodjoin-cross

126

2 way. I think, Mr. Carroll, under the circumstances  
3 you ought to tell us which statements in Exhibit 2 you  
4 would challenge.

5 MR. CARROLL: That I challenge now or at the  
6 trial?

7 THE COURT: That you challenge now for this  
8 purpose.

9 MR. CARROLL: I respectfully submit that the  
10 accuracy of this statement should not be a question before  
11 the Court, just the circumstances under which it was  
12 given.

13 THE COURT: No, because I have got to determine  
14 whether or not he was so intoxicated on February 7th that  
15 he couldn't make a voluntary decision to waive his consti-  
16 tutional right under the Fifth Amendment and in order to  
17 make that determination I have to consider all of his  
18 conduct on that date, including the statements he made. If  
19 it were shown that he made a complicated statement which  
20 was correct in all material respects, then I think that  
21 would be evidence which would be to his lack of intoxication  
22 at the time in question.

23 If, on the other hand, the statement was  
24 replete with errors that would also go to show that he was  
25 so intoxicated he didn't know what he was saying and doing.

1 qb-17

Goodjoin-cross

2 MR. CARROLL: In view of your Honor's ruling  
3 I will go through the statement and inform the Court  
4 and the Government what portions of this we do not  
5 agree with.

6 MR. SIEGEL: Perhaps the best way to proceed  
7 would be for me to ask the defendant about the particular  
8 statements and let him himself indicate whether it is  
9 true or false.

10 MR. CARROLL: In that way we get into a com-  
11 plete interrogation of the witness on his guilt or inno-  
12 cence.

13 THE COURT: I will assume that the statement  
14 is correct in all respects except those which defendant's  
15 counsel calls to the Court's attention and indicates that  
16 he wishes to challenge.

17 I will permit you to consult with Mr. Goodjoin  
18 before you respond, if you want to.

19 MR. CARROLL: Fine, your Honor.

20 Before proceeding I would like to reiterate  
21 my objection to the procedure. I don't believe that the  
22 defendant or I should have to go through this word by  
23 word and say what is not accurate according to his recollec-  
24 tion. We are getting into the guilt or innocence of the  
25 defendant and not the circumstance under which this was

1 qb-18 Goodjoin-cross  
2 given.

3 THE COURT: The only reason it is relevant  
4 here, as I tried to indicate, and perhaps not very clearly,  
5 is that this is a fairly detailed statement, three pages  
6 in length, reciting dates, amounts of checks, payees,  
7 procedure of cashing the checks and so on. If he  
8 gave all of these details accurately to the agents it tends  
9 to indicate that he was in fairly substantial command of  
10 his faculties.

11 He knew what was going on. He knew what he  
12 was saying and he had very good recall of significant facts.

13 If, on the other hand this statement is loaded  
14 with errors that it doesn't fairly reflect what he has  
15 actually done earlier then it would tend to indicate just  
16 the opposite, that he was sufficiently intoxicated at  
17 the time he was interviewed by the agents, that his  
18 waiver of his Fifth Amendment rights was not voluntary  
19 and for that reason I think it is relevant.

20 MR. CARROLL: I merely want to say that I  
21 don't feel that the accuracy of the statement should be the  
22 criterion as to whether or not it was voluntary or not  
23 for the following reason: The defendant could have been  
24 completely intoxicated on the 7th, but still had memory  
25 of facts but very susceptible to suggestions as to additional

1

qb-19

Goodjoin-cross

2

facts and that is my main problem with this statement  
3 the way some of the facts are presented and some of the  
4 conclusions that are reached.

5

THE COURT: There hasn't been, up to now,  
6 any evidence that the agents had any source for the informa-  
7 tion contained in the statement other than Mr. Goodjoin  
8 himself.

9

If you had been able to establish through  
10 cross-examination of the agents that they had gotten checks  
11 in question before this statement was prepared and signed,  
12 you would have an excellent point, but that hasn't been  
13 established. I have to assume that the only source con-  
14 tained in Exhibit 2 came from Mr. Goodjoin.

15

Maybe it came out of some effort on the part  
16 of the agent to get Mr. Goodjoin to delve back into his  
17 memory. But in the final analysis, so far as I can see,  
18 the information ultimately had to come from Mr. Goodjoin  
19 and from no other source and if it is all accurate and in  
20 this much detail it does strongly suggest to me that he was  
21 not so intoxicated that he didn't know what he was doing  
22 and wasn't capable of making a rational decision  
23 affecting his own interests.

24

MR. CARROLL: I have my objection, your Honor.  
25 I will go through the statement now.

130

1 qb-20

2 Goodjoin-cross

3 Beginning on the first page, I will read what  
4 we don't agree to be accurate in the statement. First,  
5 that Eddie asked Mr. Goodjoin if he wanted to make some  
6 money.

7 We do agree that he asked him if he could cash  
8 a check.

9 These admissions are admissions only for  
10 this proceeding, your Honor?

11 THE COURT: I understand.

12 MR. CARROLL: We don't agree that Mr. Goodjoin  
13 told Eddie that he needed money and we don't agree that  
14 it was approximately two days later that Eddie came back  
15 to his bar. It is our position that accurately stated  
16 everything took place on the same day.

17 We don't believe that Mr. Goodjoin saw Mr.  
18 Dunn drive up to the bar or that as stated in the second  
19 paragraph Mr. Dunn entered the bar and handed an envelope  
20 to Eddie.

21 The chronology of what is set forth in this  
22 second paragraph we don't agree with, the chronology of  
23 what took place. We agree Hickey received a phone call  
24 that ultimately he did cash the check for Mr. Goodjoin,  
25 that Mr. Goodjoin got the check from Eddie and that he

1 qb-21 Goodjoin-cross

2 wrote something with Mr. Goodjoin's pen, but the chronology  
3 of how this took place is not accurately set forth in the  
4 second paragraph.

5 In the third paragraph of the first page we  
6 don't agree that he got the remaining proceeds from Hickey  
7 the following day. He did receive an additional \$1000  
8 from Hickey the following day which he turned over to Eddie.

9 On the second page all the reference to Eddie  
10 are inaccurate. Eddie was not involved in this \$620 check  
11 which is reflected as \$600. It is inaccurate that Mr.  
12 Goodjoin kept the proceeds and spent them on himself. He  
13 gave them all back to the person who gave him the check,  
14 which was Dunn.

15 Again the references to Eddie, they are incorrect.

16 We don't agree at all with the next two  
17 paragraphs. It is our position that these checks, Mr.  
18 Goodjoin cashing these checks never took place. They  
19 aren't contained in the information either in this case.  
20 Nor is it accurate about any happening on the 6th. On  
21 the 7th of February he testified he went back to the hospital  
22 and that is when Agent Marquez and Hemmer picked him up.

23 The last paragraph on the third page we com-  
24 pletely dispute. As to any knowledge Mr. Goodjoin had  
25 at the time he got or cashed the checks, that is, your Honor.

1 qb-22

Goodjoin-cross

2 THE COURT: All right. You may inquire  
3 about those specific matters, Mr.Siegel.

4 Q Who did approach you in October 1974 and  
5 ask if you could cash a check at Hickey's Bar?

6 A In October?

7 Q Was it in October that somebody approached  
8 you and asked you if you could cash a check at Hickey's  
9 Bar?

10 A I don't remember that date.

11 Q Who did approach you and askyou to cash a  
12 check at Hickey's Bar?

13 MR. CARROLL: We didn't disagree with anything.

14 THE COURT: I thought you said it was not Eddie --

15 MR. CARROLL: I am talking about the first  
16 paragraph of the second page.

17 THE COURT: You said something on the first  
18 page that Eddie had not approached him.

19 MR. CARROLL: I said we didn't agree with the  
20 statement that Eddie asked him if he wanted to make some  
21 money.

22 THE COURT: All right.

23 Q What did Eddie ask you?

24 A He told me -- Eddie told me that he had a check  
25 and he was late going back for lunch because he had the

1 qb-23

Goodjoin-cross

2 early shift out of the hospital and it slipped his mind  
3 and if I could bring it up to Hickey and cash it and then  
4 bring it back over to where he was working at at the time.

5 Q What did you say to him?

6 A I says Okay, just go up there and just tell  
7 Hickey that you got to leave, that I am going to cash the  
8 check for you, that is all.

9 Q Who was the check made out to?

10 A Well, the endorsement -- it was made out --

11 MR. CARROLL: We object. We happen to dis-  
12 agree with that. He is being examined on the merits and  
13 on the guilt and innacence of the proceedings. Every  
14 fact in the case is being entered into. It is highly  
15 prejudicial.

16 THE COURT: Yes, contain yourself to the matters  
17 in dispute.

18 MR. BUCHWALD: Your Honor, what I perceive  
19 is the difficulty with the procedure is that we have a  
20 substitution of counsel having given his rendition of  
21 what is and is not in dispute for the purpose of the  
22 hearing, instead of the witness, and if the question here  
23 is, Number 1, credibility of this witness who has testified  
24 here at this hearing for the purpose of this hearing, to  
25 the extent to which your Honor should give credence to what

1 qb-24

Goodjoin-cross

2 he has testified to, it is Number 2, a question to the  
3 extent that this was accurate and/or detailed and either  
4 intentionally incorrect or accurate that lends credence  
5 to the notion that he was sober or not so intoxicated on  
6 February 7th as to render his waiver involuntary.

7 On both issues, the question of his credibility  
8 here at this hearing which is one of the crucial factors for  
9 your Honor to consider and the question of his sobriety on  
10 February 7, we submit it is absolutely essential here to  
11 be able to cross-examine him on the merits of the statement.  
12 This cannot be used against him at trial unless he should  
13 testify at trial, in which case presumably if he is telling  
14 the truth he would say the same thing at the trial as he  
15 says here today.

16 If he makes inconsistent statements then  
17 he would be cross-examined on them. But it can't be used  
18 against him at trial, unlike the typical Miranda hearing  
19 situation where the question is was he advised of his  
20 rights or not.

21 Here the allegation being made is that he  
22 was intoxicated, that he was, in the language of the cases,  
23 in a mania and so incapable of giving a voluntary waiver.

24 On that issue it seems to me one must consider  
25 the accuracy or inaccuracy of his statements and to the

1 qb-25

Goodjoin-cross

2 extent they are inaccurate whether any suggestion could  
3 be made that they were deliberately inaccurate, knowingly  
4 and intentionally inaccurate at the time.

5 Your Honor is put in a position at the hearing  
6 in view of the particular allegation here that he wasn't  
7 sober of having to assess his state of mind at the time  
8 and his credibility here at the hearing.

9 Given all of the rules which make it impossible  
10 for us to delve into this in any manner in our direct  
11 case, it seems to me that your Honor really needs that  
12 information and we should be permitted to examine this  
13 witness, not through his attorney, but this witness as  
14 to whether these statements are true.

15 The best and clearest way is to simply  
16 read statement Number 1 and ask was that true.

17 THE COURT: That may be a beautiful argument,  
18 but I don't see its relevance to the present situation.  
19 You are not being prevented from examining this witness.  
20 You are not being forced to examine his attorney, Mr.  
21 Carroll. But in examining to test his credibility you are  
22 not going to be permitted to test his credibility by asking  
23 him whether or not he committed the offense with which  
24 he is charged.

25 He has a Fifth Amendment right not to give

qb-26

Goodjoin-cross

135

1 details about that.  
2

3 MR. BUCHWALD: It is for that very reason we  
4 cannot use anything he says here in our direct case. We  
5 simply want to test whether or not the statement he made on  
6 February 7th is true.  
7

8 THE COURT: The only trouble with that argument  
9 is that his testimony now can't test the statement because  
10 the statement itself is under test. The purpose of this  
11 hearing today is to determine whether this statement can be  
12 used at all and one of the things we are considering is  
13 whether it is so replete with errors that it indicates  
14 that the statement shouldn't be used at all because it was  
15 made by one who was intoxicated and therefore not capable  
16 of making a voluntary decision.  
17

18 You are trying to pull yourself up by your own  
19 bootstraps in trying to test his present credibility by  
20 his statement when the accuracy of the statement is the very  
21 thing in question.  
22

23 MR. BUCHWALD: Could we not, if I might suggest  
24 a procedure, read sentence Number 1 of the statement and  
25 ask him now is that statement true? If he says it is true,  
that is a way of testing whether on February 7th that  
first sentence was an accurate rendition.

Then we ask him the second sentence and we ask

1 qb-27

Goodjoin-cross

2 him for his present recollection as to whether the facts  
3 in the second sentence are true and you can test the  
4 accuracy of the statement on February 7th.

5 As your Honor said there is no place else  
6 the agents could have gotten this, but from the defendant.

7 THE COURT: If I let you do that over the  
8 objections of defendant and his counsel, we might as well  
9 throw the statement in the ashcan, because you are making  
10 this defendant waive his Fifth Amendment rights in order  
11 to assert them.

12 MR. BUCHWALD: That is not correct. We can't  
13 use this at the trial against him.

14 THE COURT: You are going to use it on cross-  
15 examination. Mr. Siegel already said --

16 MR. BUCHWALD: If he takes the stand and he says  
17 after having testified here that sentence 1 is true and  
18 he takes the stand Monday in front of a jury in this court-  
19 house and says, Number 1 is false, I would submit that we  
20 certainly will cross-examine him on it, that we should be  
21 allowed to cross-examine on it, that the Supreme Court has  
22 said that to tolerate perjury, when a man testified one  
23 way in a hearing and another way at trial is not to have  
24 a system of law at all.

25 Yes, we would cross-examine him on it. But if

1 qb-28

Goodjoin-cross

2 he is telling the truth now that shouldn't be a problem.  
3 That should not inhibit him from testifying on Monday.  
4 We cannot use it in the direct part of our case. If he  
5 chooses not to testify at trial as is his right, we cannot  
6 use it at all. It is only if he testifies at trial that  
7 will be a problem and it isno problem if he is telling  
8 the truth.

9 MR. CARROLL: That is precisely why this proced-  
10 ure I think should not be followed. What if there is a  
11 statement in here which is completely incriminating, is  
12 he going to be asked to say whether or not that is accurate  
13 at this time? Must he say it for the purpose of this hearing

14 MR. BUCHWALD: We can't use it Monday if he  
15 says it.

16 MR. CARROLL: We ca- use it on cross-examination.

17 MR. BUCKWALD: If he testifies today that it  
18 was raining and he testifies on Monday that the sun was  
19 shining, we can use it and will use it in cross-examination  
20 and the law permits us to.

21 The reason the law does not permit us to use it  
22 in the direct part of our case, as your Honor has noted, that  
23 would in effect require the man to waive his Fifth Amend-  
24 ment rights in order to invoke his rights, in order to  
25 have all the facts at the hearing presented to the Judge.

1 qb-29

Goodjoin-cross

2 That is why we can't use it in the direct part  
3 of our case and we are aware of those rules.

4 THE COURT: What is wrong with the compromise  
5 that I suggested, that you ask him about those statements  
6 which his attorney now says are false?

7 MR. BUCHWALD: If Mr. --

8 THE COURT: I am going to assume for present pur-  
9 poses that every other statement is true. If I am making  
10 that assumption then why do you need any more? Your  
11 purpose today is to get to use this statement and not  
12 to prepare for cross-examination at the trial.

13 MR. BUCHWALD: I agree with your Honor and  
14 that sounded like a very fine compromise. The problem  
15 with it was that we got paraphrases. If Mr. Carroll would  
16 go through sentence by sentence -- whenever there is a  
17 followup question on what is agreed or disagreed to we end  
18 up with "Ah, no, that is not the part." If you go  
19 through sentence by sentence and say what is agreed to and  
20 what isn't and where there is a dispute indicate that, we  
21 will ask no further questions because your Honor has  
22 indicated that where there is no dispute your Honor is  
23 assuming for the purpose of the hearing that it is true.

24 We have paraphrases and when we attempt to  
25 cross-examine on the disputed areas we run into the problem

1 qb-30

55A  
Goodjoin-cross

140

2 that that particular part of it is in dispute.

3 MR. CARROLL: I don't think I know what the  
4 U. S. Attorney is talking about.5 THE COURT: I do. We won't talk about it any  
6 more. We won't discuss it any more.7 Ask your question again and you may make your  
8 objection, if you wish, and I will rule on specific questions9 I think I understand the ground rules. The  
10 Government is now accepting my proposal with the understand-  
11 ing that they are going to have to have a little latitude  
12 in followup questions about the specific statements in  
13 dispute.14 MR. CARROLL: Your Honor is aware that I am  
15 completely objecting to the procedure.16 THE COURT: I realize that. If you are willing  
17 to accept for present purposes that the whole statement  
18 is true, I will shut this matter off right now.19 MR. CARROLL: No, your Honor. I don't feel  
20 that I have to agree to that because I believe that the  
21 cases are clear that the scope of cross-examination on  
22 a hearing such as this is only to the circumstances surround-  
23 ing the giving of the statement and not the accuracy of the  
24 statement and what is in the statement.

25 THE COURT: I disagree because the witness has

1 qb-31

Goodjoin-cross

2 testified that he can't recall what he said. He can't  
3 recall reading it, the statement after it was typed, and  
4 he can't recall signing it. Suggesting that he was extremely  
5 intoxicated at the time.

6 I think this opens the door for the Government  
7 to show that the statement is correct in the vast  
8 book of the recitations of material fact.

9 MR. CARROLL: If you were willing to accept my  
10 representation that the statement was accurate subject,  
11 of course, to my objection to the entire procedure, why  
12 is it not sufficient then that you accept what I say as  
13 not accurate and then your Honor knows what defendant  
14 disagrees with and what he agrees with and on that basis  
15 you can make your ruling as to the credibility of this  
16 defendant, the credibility of the Government witnesses.

17 Why must we have cross-examination at all?

18 THE COURT: Why must the Government be bound by  
19 your statement as to what is inaccurate? That is what we  
20 are getting at. The Government can cross-examine this  
21 witness to test the accuracy of the challenged statements.

22 MR. CARROLL: In this hearing? I respectfully  
23 disagree.

24 THE COURT: All right.

1 qb-32 Goodjoin-cross

2 Q It is your testimony, Mr. Goodjoin, that  
3 Eddie Sumpter did not ask you if you wanted to make some  
4 money?

5 A True.

6 Q He did not ever ask you that?

7 A He did not.

8 Q And you did not tell him that you needed any  
9 money?

10 A No, I did not.

11 Q And he handed you a check for \$1286 and asked  
12 you to cash it and that check was made out to Aura Brewer?

13 A Yes, sir.

14 Q And he gave you the check on the same day that  
15 you cashed it?

16 A Yes, sir.

17 Q Was he one of the people out in front of the  
18 bar that day?

19 A In front of the bar --

20 Q At lunch time that day.

21 A No, sir.

22 Q Is it your testimony that Dunn did not drive up  
23 to the bar?

24 A My testimony is Dunn did drive up to the bar,  
25 him and his brother did.

1 qb-33 Goodjoin-cross

2 Q That statement is in fact accurate.

3 A Yes.

4 Q I am referring to the two sentences from the  
5 end of the first paragraph which states that, deleting the  
6 part the defendant testified is inaccurate Eddie and I  
7 were at Hickey's Bar when a person whom I know as Dunn drove  
8 up to the bar.

9 It is your testimony that that statement is  
10 accurate?

11 A Yes.

12 Q Everything else in that paragraph -- do you  
13 have a copy of the statement in front of you?

14 A No, sir, I don't.

15 THE COURT: Don't talk about the statements  
16 that are accurate. I said I would accept them as accurate  
17 except as Mr. Carroll has called them to your attention.

18 MR. SIEGEL: I understand, your Honor.

19 Q It is now your testimony that Dunn did not enter  
20 the bar and hand Eddie an envelope?

21 A He did not.

22 Q What did Dunn do after he drove up?

23 A From where I was sitting I could look right out  
24 the window.

25 MR. CARROLL: I object to the question.

1 qb-34

Goodjoin-cross

2 THE COURT: I am going to permit it. This  
3 is relevant to what Dunn did when he arrived, whether he  
4 entered the bar or exactly what he did do.

5 Q What did Dunn do?

6 A I was sitting in the place where I can look right  
7 out the window but I could see there were two people in  
8 the car by the top of their heads, and I recognized one of  
9 them was Dunn, the patient, because he is a paraplegic  
10 and he drives one of those cars. Eddie went out there  
11 at that time to the car and he like slumped down and dis-  
12 appeared for about a couple of seconds and then he came  
13 up and then he came back in the bar.

14 Q Then Eddie gave you the envelope?

15 A Yes, he asked me for my pen and then I got up  
16 for something, to get a beer or something, and I came back.  
17 Then he handed me the envelope and he says I am going  
18 over to talk to Hickey because I have to go. He went up  
19 and talked to Hickey for a few minutes, and whatnot, and  
20 I went to the bathroom and I looked around and I saw them  
21 two talking.

22 Q Which two?

23 A Eddie and Hickey. When I got back he said  
24 okay, I will meet you on the third floor of the hospital,  
25 because I have to run right back now.

1 qb-35

Goodjoin-cross

2 He says I talked to Hickey and everything is  
3 okay. I went over there, you know, and about a couple  
4 of minutes later there was a phone call. Hickey picked  
5 up the phone and he said yes, right over here, you know,  
6 and he talked for a second or two and he hung up and  
7 came back and there was a letter in the envelope along  
8 with the check, and he looked at it and said, I don't have it  
9 all now, I just got the 200. He says, but you can come  
10 back tomorrow morning after ten o'clock and I will have  
11 the rest and that is all it turned out.

12 I took the money over there and gave it to  
13 Eddie and I went about what I had to do.

14 Q Did you ever see the check then?

15 A The only thing I saw, I saw the amount it was  
16 and I saw the back of the check. It was already lost and  
17 everything and Mike told me to put my signature on the  
18 bottom of it.

19 Q And it is your testimony that this letter was  
20 already in this envelope that you referred to?

21 A Yes, sir, it was.

22 Q Did you endorse the check after that?

23 A Yes, I endorsed my signature on the bottom half  
24 of the check.

25 Q I show you Government Exhibit 7 in evidence and

1 qb-36

Goodjoin-cross

2 ask if that is a copy of the check that you referred to  
3 in your testimony?

4 A Yes, sir, it is.

5 Q Is that your signature or a facsimile thereof  
6 on the back of the check?

7 MR. CARROLL: Your Honor, I object.

8 THE COURT: Sustained.

9 THE WITNESS: Yes, sir, that is my signature.

10 MR. CARROLL: Did the witness answer the  
11 question?

12 THE COURT: Yes, he did.

13 That answer may be stricken.

14 Q Were you drunk or sober when you signed that  
15 check?

16 A About medium.

17 Q How many drinks had you had prior to signing  
18 that check?

19 A I figure it was about 10:30, almost 11:00  
20 o'clock and my first class was at 8:00. I couldn't get  
21 nothing then but after my first class we went out and had  
22 a few. I had a couple of bottles of wine to drink  
23 and whatnot, and then I went over to Hickey's because I  
24 figured, you know, I better get my lunch over there and  
25 then travel on home.

1 qb-37

Goodjoin-cross

2 THE COURT: You had a couple of bottles of  
3 wine and several drinks in addition and you were only so-  
4 so?

5 THE WITNESS: Yes, halfway gone, but not com-  
6 pletely yet.

7 Q You knew what you were doing when you signed  
8 that check though, didn't you?

9 MR. CARROLL: Objection.

10 THE COURT: Sustained.

11 MR. SIEGEL: I am not sure exactly how to  
12 proceed at this point. The testimony he has just given  
13 is completely at variance with the description he gives in  
14 the paragraph. I guess the solution is to let it stand at  
15 this point the way it is.

16 Q Your testimony now is that you didn't place a  
17 phone call at all?

18 A No, sir.

19 Q And you never told Hickey that you were going  
20 to call the payee?

21 A No, sir, I didn't.

22 Q Did you ever tell Hickey that you knew the payee?

23 A No, I didn't.

24 THE COURT: And Hickey didn't talk to Eddie  
25 over the telephone with Eddie pretending to be the payee?

1 qb-38

Goodjoin-cross

2 THE WITNESS: There was a phone call while I  
3 was up at the bar when I gave Hickey the check, there  
4 was a phone call right after that because he said he  
5 couldn't cash it really because of the amount of it, and  
6 then the phone rang and Hickey picked it up and said a couple  
7 of things, Okay, yes, fine, okay, okay, and that is when  
8 he opened up the envelope and took out the letter.

9 THE COURT: You learned later it was Eddie he  
10 was talking to?

11 THE WITNESS: I assumed it must have been  
12 Eddie.

13 THE COURT: All right.

14 Q Who brought you this letter that you described?

15 A The letter was inside the envelope.

16 Q Did you look at it?

17 A No, sir. I saw the check in the envelope  
18 but I didn't have no idea there was a letter in it.

19 Q What did you hand to the bartender then?

20 A I handed the bartender the whole envelope.

21 Q And you never opened it?

22 A The envelope was opened. It was a white envelope  
23 and it had a brown envelope with the check inside along with  
24 the letter.

25 Q But you did not look inside it before you handed

1 qb-39

Goodjoin-cross

2 it to him?

3 A No, sir, I didn't.

4 Q You never did?

5 A No.

6 Q You never knew what was on that letter then?

7 A No, sir, s didn't.

8 Q It is your testimony that Hickey did not give you  
9 back the rest of the money the next day?

10 MR. CARROLL: Objection.

11 THE COURT: He said that wasn't challenged.

12 In fact, it was specifically admitted by counsel.

13 MR. CARROLL: What was admitted was that Hickey  
14 gave him \$1000 the next day.15 MR. BUCHWALD: There is a \$1086 difference and  
16 I think what counsel is saying is that they dispute  
17 the \$86 except he does it in terms of an admission rather  
18 than dispute.

19 THE COURT: I see.

20 All right.

21 Q It is your testimony then that Hickey did not  
22 give you back \$1086?23 A I really don't know because I didn't count the  
24 \$200 out. I didn't count it out. I just put it in my  
25 pocket and went across the street.

2 Q But the next day when you met him in the after-  
3 noon he gave you back some more money.

4 A Yes.

5 Q How much more money did he give you?

6 A \$1000 he gave me back.

7 Q Did you count it?

8 A He counted it out in front of me.

9 Q Did you ask him about the \$86?

10 A I assumed it was with the \$200 he gave me.

11 Q You never counted the other money?

12 A No, sir.

13 Q Did you give that money to Eddie Sumpter later  
14 on?

15 A Yes.

16 Q Did he ask you about that money?

17 MR. CARROLL: Your Honor, this is admitted.

18 We admit the first question and the second question isn't  
19 covered in the statement at all.

20 THE COURT: Yes.

21 MR. SIEGEL: He says I turned the money over to  
22 him and I was trying to ascertain how much money he  
23 did turn over and whether he had any idea about it.

24 THE COURT: \$1000, he said.

25 Q Referring to the second page of your statement,

1 qb-41

Goodjoin-cross

2 the paragraph beginning on or about November 1974, who did  
3 you meet in the VA Hospital?

4 A That was Dunn I met over there.

5 Q And it is Dunn who gave you the check?

6 A Yes.

7 Q And he asked you to cash it?

8 A Yes, he said he couldn't make it outside because  
9 he was too busy down in the mail room. He asked me if I  
10 could cash it for him and bring the money back so he can  
11 give it to the patient when he makes his mail rounds upstairs

12 Q Did you look at the signature on that check?

13 MR. CARROLL: Objection, your Honor.

14 THE COURT: Sustained.

15 Q What did you do with the proceeds of that check?

16 A After I withdrew \$600 out on that account,  
17 because I had twenty, thirty dollars in my pocket so I  
18 figured since I only had \$1 in the bank, I said I would leave  
19 the \$20 in there and I can use my own money to make it  
20 \$620 altogether. So I had a class and I rushed over to the  
21 hospital and I gave Dunn the money in an envelope and from  
22 there I just went on to school.

23 Q Was Dunn in a hurry for that money?

24 MR. CARROLL: Objection. There is nothing in  
25 the statement about that, your Honor.

1 qb-42

Goodjoin-cross

2 THE COURT: Sustained.

3 Q It is your testimony then that Dunn and not  
4 Eddie asked you about the check?

5 A Dunn asked me to cash it, yes.

6 Q I am talking about after you already deposited  
7 it. Looking at the first paragraph of the statement you  
8 say when Eddie asked me about the check, I told him  
9 the bank would not make withdrawal on the check until three  
10 days later.

11 A That didn't happen like that because I informed  
12 Dunn, I called him up and I said get in touch with  
13 the patient to tell him if I put it in my account I have  
14 to wait a week before it clears. If he needs the money  
15 right away I will bring the check back up to him.

16 That is what I told Dunn.

17 Q To whom?

18 A That is what I told Dunn. He got on the phone.  
19 He put me on hold and we were on the phone a couple of  
20 seconds and he got me back on the line and he says the  
21 patient said it is okay.

22 So I went ahead and put it in my bank.

23 Q Where were you calling from?

24 A I was calling from around where I live.

25 Q It is your testimony that you didn't spend

1 qb-43

Goodjoin-cross

156

2 any of the proceeds of that check?

3 A No, sir, I didn't.

4 Q And you gave Eddie all the money from that  
5 check?6 MR. CARROLL: Objection, your Honor, that is  
7 not what he said.8 THE COURT: He said he didn't spend any of  
9 it. In the statement he said that he never gave --10 MR. CARROLL: My objection was to the reference  
11 to Eddie.

12 MR. SIEGEL: I am sorry, my mistake.

13 Q Your testimony is that you gave Dunn back how  
14 much money?

15 A I gave him back altogether \$620.

16 Q When was that?

17 A That was the week after I put the check in  
18 the bank.

19 Q How many days, do you remember?

20 A Well, it was five work days.

21 Q Five work days after you deposited the check?

22 A Yes. It was the same day but a week after that  
23 I withdrew the money.

24 Q And you gave Eddie this money in cash?

25 A No, I gave Dunn the money in cash.

1 qb-44

Goodjoin-cross

2 Q You gave Dunn the money in cash?

3 A Yes, sir.

4 Q Did you ask at the bank how long it would take  
5 to have the check cleared?

6 MR. CARROLL: Objection.

7 MR. SIEGEL: I am entitled to go into that.

8 There are several statements which counsel indicated are  
9 not inaccurate and the witness has stated --10 MR. CARROLL: It doesn't say anything about  
11 asking anything at the bank.12 MR. SIEGEL: The bank would not make any with-  
13 drawals until the check had cleared five days later.14 THE COURT: That is a statement that everybody  
15 knows as a matter of law and custom. The bank won't  
16 let you draw a deposit immediately.17 MR. SIEGEL: I am inquiring whether he inquired  
18 on that --

19 THE WITNESS: I had the knowledge of that.

20 Q Is it your testimony that in December it was  
21 Dunn who presented you with a VA check which he asked you  
22 to cash for about \$620?

23 A Excuse me?

24 Q The next paragraph, woul you read through that.

25 MR. CARROLL: When I made my statement I said

1 qb-45

Goodjoin-cross

2 we disagree with the accuracy of the second last, and last  
3 paragraph. We take the position that this never happened.

4 MR. BUCHWALD: One of the difficulties with  
5 the procedure is that we have difficulty in asking questions  
6 of the defendant without the defense attorney stating in  
7 open court in front of the defendant what the testimony  
8 perhaps ought to be.

9 MR. CARROLL: I take issue with that.

10 MR. BUCHWALD: I don't mean it in the sense  
11 that it is being deliberately suggestive, but the procedure  
12 inevitably is such that the defendant hears what defense  
13 counsel says. I did not intend it in any derogatory  
14 sense.

15 THE COURT: Are you disputing everything in the  
16 last two paragraphs on page 2?

17 MR. CARROLL: Yes. We are saying there  
18 were never any other checks other than those two.

19 THE COURT: You can ask him about any of those  
20 things that you want to ask him about then.

21 Q Is it your testimony then that you never cashed  
22 the check at O'Leary's Bar for \$260?

23 A I cashed checks at O'Leary's Bar, but they were  
24 my money.

25 Q You never cashed anybody's checks other than

1 qb-46 Goodjoin-cross

2 your own at O'Leary's bar?

3 A No, sir, I didn't.

4 Q Is it your testimony that Eddie never presented  
5 you with a check from the VA in December of 1974?

6 A It's true, never.

7 Q Did Dunn do that?

8 A No, sir, he didn't.

9 Q Did you owe \$100 on your bar bill at that time?

10 A Yes, but I pay that up out of my own checks.

11 Q When did you do that?

12 A I usually pay O'Leary about once every month.

13 Q I take it O'Leary is the owner of the bar?

14 A Yes, he did.

15 Q In January of 1975 did you go see Dunn in the  
16 mail room of the Veterans Hospital?

17 A No, sir, I didn't.

18 Q You never saw Dunn at any time during January  
19 of 1975 in the mail room?

20 A No, sir.

21 Q Did you see Eddie in the mail room?

22 A No, sir. At that time I believe he wasn't  
23 working there.

24 Q Did you see Eddie at any time during January  
25 1975?

2 individual named William Goodjoin?

3 A Is that the 7th?

4 Q Yes

5 A Yes, I did.

6 Q Could you describe that contact and how it came  
7 about?

8 A I met Mr. Goodjoin on the 7th as a result of  
9 a phone conversation I had had with him the previous night.  
10 I was on duty the previous night working a 4:00 to 12:00  
11 shift, and that evening while on night duty I received  
12 a telephone call in which time I had a conversation with  
13 Mr. Goodjoin and he informed me that he could provide me  
14 with information about a check forgery ring at the VA  
15 hospital. After general conversation, I determined from  
16 Mr. Goodjoin that a Mr. Dunn, who had approached him, and  
17 that the following day, which would have been the 7th Mr.  
18 Goodjoin was to meet with Mr. Dunn, and at which time Mr.  
19 Dunn was to give Mr. Goodjoin stolen and forged Government  
20 checks belonging to patients of the VA Hospital.

21 At that point I conferred with my partner who  
22 was at the time Special Agent Hemmer and we decided that  
23 what we would do was contact our supervisors that night and  
24 arrange a meeting for Mr. Goodjoin the following morning.

25 We asked Mr. Goodjoin where it would be a

1 qb-63]

Marquez-direct

173

2 good place to meet him and he advised us that Hickey's Bar  
3 would be an appropriate location.

4 I then asked him what he would be wearing and  
5 he advised me he would be wearing a hat and an Army  
6 fatigue jacket. I told him I would meet him there some  
7 time late morning or early afternoon, that I had to make  
8 a few phone calls and he said that would be fine.

9 THE COURT: He didn't mention a white turtleneck sweater that he would be wearing?

10 THE WITNESS: As a matter of fact, he was  
11 wearing --

12 THE COURT: The question is whether he mentioned  
13 it when he spoke to you on the evening of the 6th.

14 THE WITNESS: Yes, I think he did mention it.  
15 I remember the sweater. I remember the coat and the hat  
16 though more vividly.

17 I then contacted my supervisors, at which  
18 time it was agreed that we would meet early in the morning  
19 for the purpose of discussing what we were going to do.

20 At that time Agent Hemmer and I brought up the  
21 idea of using a monitoring device and Mr. Goodjoin if he  
22 was willing to do so. We needed our supervisor's approval  
23 for that. We contacted him for that reason. The next  
24 morning we met at the office. I was at the office, I would

1 qb-64

2 Marquez-direct

3 174

4 say approximately 10:30, 11:00 o'clock with Agent Hemmer.

5 We met with our assistant special agent in  
6 charge who was Ken Thompson, and also with assistant to the  
7 special agent in charge, Hoffman. At that time approval  
8 was given to use an electronic monitoring device, and we  
9 got all the necessary equipment, plus the manpower we  
needed and departed our office, which was approximately  
12:00 o'clock, to Hickey's Bar.

10 At that time Agent Hemmer and I entered the bar.  
11 We sat down and knowing what Mr. Hickey was supposed to  
12 wear, proceeded to look for him. At first we did not spot  
13 him and what I decided to do was I decided to get up  
14 and go to the bathroom, and on the way back confront someone  
15 who I thought would be Mr. Goodjoin and ask him if that  
16 was in fact him.

17 There were two individuals sitting together.  
18 I asked the individual on my right, are you Bill, and before  
19 he got a chance to answer, the individual on my left said no,  
20 I am Bill.

21 I asked him to pick up his drink and I was the  
22 guy he talked to the previous evening, and would he come to  
23 the table.

24 At that time we went to the table and we decided  
25 that we should leave.

1 qb-65

Marquez-direct

175

2 didn't want to talk there or he didn't want  
3 to talk there either.

4 We left and went to the car. Supervisors were  
5 there and also a representative from the hospital, Mr.  
6 Petrie was there.

7 We told him that we wanted him to go ahead and  
8 meet Mr. Dunn and see if he could get the checks, but since  
9 we couldn't surveil him in the hospital that we wanted  
10 him to wear this monitoring device and asked him if he  
11 would, and he agreed to.

12 We moved to a parking lot which was northwest  
13 of Hickey's Bar and of the hospital, at which time Agent  
14 Nedrow placed the monitoring device on Mr. Goodjoin. It  
15 was tested. Mr. Goodjoin then walked back to the VA  
16 Hospital. We followed him. Some of us were there ahead of  
17 time.

18 Mr. Hofmann set up the equipment so he could  
19 monitor, which was simply a radio, a portable radio, so he  
20 could monitor any conversations.

21 For approximately two hours Mr. Goodjoin was  
22 walking through the hospital.

23 THE COURT: Two hours?

24 THE WITNESS: Approximately, I would say that.

25 I am not quite sure, but I think it was two hours we waited.

1 qb-66

Marquez-direct

176

2 We then finally were able -- we came up with  
3 him again and we advised him that the Kel kit, the micro-  
4 phone had slipped down and that they couldn't hear any  
5 conversations he had. He advised us that he had not met  
6 with Dunn. We then all got together and it was decided  
7 that we would discontinue at that time and make our plans  
8 and decide what we were going to do accordingly.

9 The Kel kit was removed, if my recollections  
10 are correct. We got together, Mr. Goodjoin came with myself  
11 and Hemmer and we proceeded back to the office.

12 Q If I can interrupt you for a moment. Did the  
13 Kel kit actually record anything?

14 A No.

15 Q Was there a tape that would normally record?

16 A Yes, there was a tape recorder brought. Once  
17 he got into the hospital and once he was making his way  
18 to the area in which the suspect Dunn was supposed to be  
19 working at the mail room, it was evident that something  
20 had gone wrong because we were just getting static and the  
21 only conversation we could ever hear was his greetings of  
22 people that he knew at the hospital.

23 There was no recording made obviously because  
24 that wasn't of any help to us. Most of the time we spent  
25 hoping that he would come back out. He obviously did

1 jgh 4 Marquez-direct

2 A Yes, we stopped at a liquor store at his request.  
3  
4 He asked us if we would mind stopping so he could buy  
5 a bottle of liquor. He knew of a liquor store on Fordham  
6 Road and we got off on Fordham Road from the Major Deegan,  
7 stopped at the liquor store and he ran in. We waited outside  
8 and he came out, got his liquor and we drove him to his  
residence.

9 Q Previously what happened at his house?

10 A I remember we parked the car outside and went  
11 in. We met his mother. He introduced us to his mother.  
12 He wanted to show us his checkbook. He produced the  
13 checkbook and if I remember correctly --

THE COURT: Do you mean checkbook?

15 THE WITNESS: I mean savings account book. He  
16 also produced a photostat copy of a check which he claimed  
17 had been stolen from him.

18 Q Could you describe the defendant's demeanor  
19 when you initialaly made contact with him?

20 A We were with him a major part of the day obviously  
21 and he appeared perfectly normal. There was no question  
22 as to how he was acting or anything, no problems at all.  
23 He was perfectly normal.

Q How would you describe his speech?

A He was fluent. He was accurate.

2 Q Did he have any difficulty in carrying out the  
3 various tasks you asked him to perform?

4 A None whatsoever.

5 THE COURT: Was his speech slurred?

6 THE WITNESS: Not at all.

7 THE COURT: How would you describe his walk?

8 THE WITNESS: He was walking normally. There  
9 was no question -- there is no time in which I questioned  
10 that he was not in good shape.

11 Q Did you ever ask him how much he had had to drink?

12 A I don't recall asking him that question.

13 THE COURT: Did he ever tell you that he had had  
14 any amount to drink?

15 THE WITNESS: I don't recall him telling me that.

16 Q Did you at any point discuss his drinking with him?

17 A When we got back to the office Agent Hemmer re-  
18 membered that we had had contact with him around November  
19 of '74. At that time it all came together because at that  
20 point we were on duty working 4 to 12 one evening when we  
21 had been contacted by Agent McIntosh. He informed us  
22 he would like to get together with us around the area of  
23 182nd Street and Park Avenue in Manhattan. I'm sorry, that's  
24 the Bronx. We did, and at that point was the first time  
25 I had ever seen Mr. Goodjoin.

1 jqh 16

Marquez-redirect

2 MR. CARROLL: No further questions.

3 REDIRECT EXAMINATION

4 BY MR. SIEGEL:

5 Q Agent Marquez, did you have occasion to discuss  
6 with me briefly this afternoon the circumstances of the  
7 placing of electronic devices on the defendant William  
8 Goodjoin?

9 A Yes, sir, I did.

10 Q Could you relate briefly the substance of that  
11 conversation?

12 A There was a bit of discrepancy on my part as  
13 to when we actually had used the equipment. I had felt  
14 that I had met with Mr. Goodjoin one previous time. Agent  
15 Hemmer and I had met with him at Hickey's Bar and then  
16 used the equipment. It was not until I actually pulled  
17 out my dailies that I realized it all had occurred on the  
18 same day. Other meetings were subsequent to this initial  
19 meeting in which we used the equipment and brought h-m  
20 down to the office.

21 Q Were you under the impression that the incident  
22 in which the electronic device was placed on Mr. Goodjoin  
23 occurred prior or after the events of February 7th?

24 A Say that again please.

25 Q Were you under the impression that the placing

1 q;mg 6

205

2 THE COURT: I thought you might recall.

3 MR. CARROLL: The statement on the first two  
4 paragraphs of the first page, the parts which we dispute,  
5 the basic facts we admit that are contained in those  
6 statements.7 It is just the twist that the statements are  
8 given in the statement; twists that could easily be put  
9 into the mind of a man who had too much to drink that we  
10 object to, the twists about "Do you want to make some  
11 money?" things like that. That is the part of the state-  
12 ments that I think make this statement inadmissible at trial.13 I think we have shown the condition Mr. Goodjoin  
14 was in, that it was not given voluntarily, and I think it  
15 would be highly prejudicial to permit this statement to  
16 be admitted at trial for that reason.17 THE COURT: I believe this case is set for trial  
18 next Monday.19 Because of the shortness of time that remains  
20 I think I am obliged to render my decision promptly from  
21 the bench.22 I have been impressed with the candor of the  
23 two Government witnesses, Mr. Hemmer and Mr. Marquez, who  
24 testified concerning the condition of the defendant  
25 Goodjoin during the time he was making the statement and

1 Q:mg 7

2 signing the transcript of that statement on February 7,  
3 1975.

4 Moreover, although there are a number of dis-  
5 crepancies between the statement, Exhibit 2, and the  
6 testimony of the defendant Goodjoin, there are many sig-  
7 nificant consistencies, particularly with respect to the  
8 precise amount of the \$1286 check, the name of the payee  
9 and many of the circumstances of the endorsement and cash-  
10 ing of that check as well as with respect to the approxi-  
11 mate amount of the \$620 check and the principal circum-  
12 stances of its cashing.

13 And I believe the fact that the defendant was  
14 able to make so detailed a statement which is accurate  
15 in so many respects is further evidence of the mental  
16 capacity and competency of the defendant at the time the  
17 statement was made.

18 Both Hemmer and Marquez testified that as far  
19 as they can see the conduct of the defendant was in all  
20 respects normal. His speech was normal and not slurred.  
21 His gait was normal in all respects and there was nothing  
22 in his conduct to suggest that he was inebriated or in  
23 any way incapacitated or in less than full control of his  
24 motor functions and mental faculties.

25 The defendant has testified that he consumed a

1 Q:mg 8

2 great deal of alcoholic beverages prior to making the  
3 statement.

4 If I am to credit his testimony and still credit  
5 the testimony of Hemmer and Marquez, I would have to be-  
6 lieve that he has a most unusual capacity for drinking  
7 wine and rum and not showing it.

8 To any extent to which his testimony is in con-  
9 flict with the testimony of Hemmer and Marquez, I credit  
10 the testimony of Hemmer and Marquez.

11 It is possible, of course, that there is no  
12 inconsistency, that he drank everything that he said he  
13 did before making the statement, still was able to make  
14 a voluntary and knowledgeable waiver of his constitutional  
15 rights and to make a voluntary and accurate statement  
16 concerning his activities in connection with the checks  
17 in question.

18 In addition to these factors, Mr. Goodjoin was  
19 shown the statement on June 10, 1975, and in the presence  
20 of Special Agent McLain and others, he read it over and  
21 signed and dated each of its three pages.

22 He testifies that he had been drinking also on  
23 June 10 but he did not say how much he had been drinking.

24 The testimony of Mr. McLain is that he showed  
25 no evidence of being in any way intoxicated, or I should

1 Q:mg 9

2 say to any degree intoxicated, that his speech and his  
3 physical functions were all apparently normal.

4 One other factor which should be mentioned is  
5 the fact that in testifying today Mr. Goodjoin showed a  
6 detailed recall of his activities on the 7th of February.  
7 He can recall to whom he talked and the general subjects  
8 of the conversation.

9 He can remember how much of what kind of liquor  
10 he bought and for what price and when and under what cir-  
11 cumstances he drank it.

12 He remembers his meetings with the special agents  
13 and what they did in considerable detail.

14 He was able to volunteer to wear a recording  
15 device or transmitting device into the hospital for an at-  
16 tempted conference with Mr. Dunn, the suspected source of  
17 the checks.

18 According to his own testimony he went to the  
19 basement and to other points in the hospital looking for  
20 Mr. Dunn. And he was able to come back to the car and  
21 make a report that he had been unable to find Dunn.

22 He recalls the street where the agents' car was  
23 parked, the side of the street it was parked on, the direc-  
24 tion it was headed.

25 He recalls the conversation or at least some of

1 Q:mg 10

2 the subjects of the conversation on the ride down to the  
3 Secret Service office.

4 He knows the location of that office in the  
5 World Trade Center.

6 His recollection of many of these details at  
7 this date almost a year later is indicative of a person who  
8 is aware of what is going on.

9 When the special agents came to meet the defendant  
10 in Hickey's Bar, he was sufficiently alert and per-  
11 ceptive to ask them for identification.

12 He was sufficiently rational and careful to  
13 be uncomfortable about the fact that he was talking to a  
14 couple of strangers in Hickey's Bar whom his friends might  
15 suspect of being law enforcement officers, and to suggest  
16 that they talk elsewhere.

17 For these reasons, among others, I conclude that  
18 at the time the defendant, William Goodjoin, made the  
19 statements to Officers Hemmer and Marquez and read over  
20 the transcript of those statements which Agent Hemmer had  
21 typed up and signed that statement, he was alert, aware,  
22 cognative and rational, and that his statement and his  
23 execution of the transcript of that statement were products  
24 of a meaningful action of volition within the contemplation  
25 of United States v. Silva, 418 F.2d 328, Second Circuit, 1969.

1 Q:mg 11

2 I also conclude that whether or not he was in  
3 custody or a suspect at the time he was given warning of  
4 his constitutional rights to remain silent and to have  
5 counsel that he voluntarily and knowledgeably waived  
6 those rights and that that waiver was also the product  
7 of a meaningful act of volition.

8 Finally, it is of some significance that the  
9 defendant has not called as witnesses any persons who might  
10 have been able to testify about his condition on the 7th  
11 of February and on the 10th of June.

12 For example, according to his testimony, he had  
13 been drinking at Hickey's Bar on February 7th and the  
14 bartender Pat had given him four, eight-ounce glasses full  
15 of rum.

16 The testimony of the defendant was that so far  
17 as he knows Pat is still working at Hickey's Bar and would  
18 have been able to confirm that testimony and if the defendant  
19 was in fact inebriated to the point where his volition  
20 would have been impaired, would have been able to testify  
21 to that effect, presumably.

22 With respect to June 10, the defendant testified  
23 that he was arrested at his home by Agent McLain and his  
24 mother was present at the time and if he had been so  
25 inebriated that his ability to make a voluntary waiver or

1 O:mg 12

2 statement had been significantly impaired, she presumably  
3 would have been able to testify to that effect.

4 I, therefore, deny the motion to suppress.

5 MR. CARROLL: Your Honor, there are a number of  
6 other motions that we have on demand for a bill of particu-  
7 lars and for discovery.

8 The Government has not responded with any  
9 papers. I don't know what their position is on this.

10 MR. SIEGEL: The Government is in the position  
11 that we will provide the defendant's counsel with the in-  
12 formation requested in items 1 of both count 1 and count 2,  
13 and as to the remaining material we contend that it is  
14 evidentiary in nature, going to the proof, going to be  
15 offered by the Government and under United States v. Crisona,  
16 it is not required to be revealed in the bill of particulars.

17 MR. CARROLL: I think the defendant has a right  
18 to know whether the Government claims, in item 2, that he  
19 placed the allegedly false, forged and counterfeit endorse-  
20 ment on said check.

21 The information does not charge it but if the  
22 Government does not intend to put any evidence in to that  
23 effect --

24 MR. SIEGEL: The information speaks for itself and  
25 we don't need to make any offer of proof beyond that at this

1 gtlm

2

2 THE COURT: For the record, defense counsel  
3 has made an application to reopen the hearing on defendant's  
4 motion to suppress the statement made by Mr. Goodjoin  
5 to agents of the Secret Service on February 7, 1975 for  
6 the purpose of introducing the testimony of a Mr. O'Leary,  
7 the proprietor of a bar which the defendant William  
8 Goodjoin frequented, for the purpose of establishing that  
9 Mr. Goodjoin is a man who can consume considerable  
10 volumes of alcoholic beverages without obvious evidence  
11 of intoxication and, further, that some of the details of  
12 the statement made by Mr. Goodjoin to the agents with  
13 respect to the details of cashing one of the two checks  
14 involved at O'Leary's Bar are incorrect.

15 The Government does not oppose the application  
16 for a reopening, but shares the Court's doubts that the  
17 evidence which has been suggested will be introduced  
18 could change the Court's decision that the defendant was  
19 mentally competent and rational at the time he waived his  
20 Fifth Amendment rights and made a voluntary statement to  
21 the agents.

22 The defendant has not appeared yet, though  
23 counsel have informed the Court that they have telephoned  
24 his residence and have learned that he is apparently  
25 on his way to court. So in any event we will have to wait

1 gtlm

3

2 until he gets here before we go ahead.

3 MR. CARROLL: Your Honor, there are two points  
4 which I would like to add to what you said:5 First, it was not one of the two checks that  
6 was involved in O'Leary's, it was two additional checks  
7 that are referred to in the statement, two third-party  
8 checks other than the ones involved in the information  
9 here, which the defendant is alleged to have said he  
10 cashed at O'Leary's, and also Mr. O'Leary will testify  
11 as part of the demeanor of the defendant when he is  
12 intoxicated he is very open to suggestions and very agree-  
13 able to anything that is said to him.

14 THE COURT: All right.

15 Off the record.

16 (Discussion off the record.)

17 THE COURT: Take this on record.

18 At the suggestion of government counsel, I think  
19 it would be in order to ask defense counsel for a formal  
20 offer of proof which the Court might consider.21 It may be that upon consideration of the offer  
22 of proof the Court may find it possible to indicate  
23 that even assuming that this proof was actually forth-  
24 coming, it would not change the Court's decision denying  
25 the motion to suppress.

1 gtlm

2 So if you will, please, counsel, make your  
3 offer of proof.

4 MR. CARROLL: Yes, your Honor.

5 The defendant would prove through Mr. Daniel  
6 O'Leary, who is the proprietor of a tavern or bar in the  
7 Bronx, at Eastchester and Boston Road, which is very close  
8 to Mr. Goodjoin's home, that he has known Mr. Goodjoin  
9 for quite a number of years and Mr. Goodjoin has frequented  
10 his bar very regularly over those years and that he has  
11 come to know his drinking habits and, further, that the  
12 defendant can consume a large amount of liquor and not  
13 really show any outside or outward appearances of being  
14 intoxicated; his speech is normal, his walk is normal,  
15 although he is very much open to suggestions and very  
16 agreeable to anything anybody suggests, but unless you  
17 know him as Mr. O'Leary does, you cannot tell actually  
18 that he is intoxicated.

19 I would also hope to show or would show through  
20 Mr. O'Leary that two of the checks or two checks that  
21 are referred to in the statement involved here wherein the  
22 defendant allegedly stated he cashed two third-party  
23 checks in O'Leary's Bar in December or January for the  
24 amounts -- I think it was \$260 and \$300 -- that he received  
25 from this fellow Dunn, that Mr. O'Leary has no recollection

1 gtlm

2 whatever of ever cashing any third-party checks for Mr.  
3 Goodjoin.

4 And through that evidence it would show two  
5 additional, I think, very material discrepancies in the  
6 statement in addition to the discrepancies that were  
7 established at the hearing the other day, and I think  
8 taken with the evidence of Mr. Goodjoin's demeanor when  
9 he is intoxicated, his very openness to suggestions and  
10 the testimony of the agents as the manner in which the  
11 questioning went forward, that this should convince the  
12 Court that his statement was not given voluntarily and  
13 should not be admitted into evidence and it should be  
14 suppressed.

15 THE COURT: Does the Government want to comment  
16 briefly?

17 MR. BUCHWALD: Your Honor, we would be satisfied  
18 to proceed on the basis of that offer of proof, if your  
19 Honor feels that that information, if accepted for  
20 purposes of the hearing by your Honor, would not have  
21 altered your Honor's decision.

22 If your Honor would feel more comfortable with  
23 Mr. O'Leary testifying and being subjected to cross-  
24 examination, we would be happy to proceed that way  
25 well.

1 gtlm

2 THE COURT: It is extremely inconvenient to  
3 proceed because we have the jury waiting outside in the  
4 corridor right now. But, of course, we can't proceed  
5 until the defendant gets here in any event.

6 Where is the defendant?

7 You have heard nothing further than what you  
8 reported a moment ago?

9 MR. CARROLL: No, your Honor.

10 Your Honor, one additional fact I would hope to  
11 prove through Mr. O'Leary.

12 I would show him the photograph that was taken  
13 of the defendant on February 7, 1975 and through Mr.  
14 O'Leary establish from the appearance of the defendant  
15 in that photograph he had been drinking quite heavily.

16 THE COURT: I would give no credit whatever to  
17 that, because looking at the photograph it seemed to me  
18 that he appeared in the photograph exactly as he appeared  
19 in court the other day. He appeared in the photograph  
20 completely sober; that is to say, there was no evidence  
21 of intoxication in the photograph, just as there was no  
22 evidence of intoxication when he testified the other  
23 day.

24 I believe that even assuming that Mr. O'Leary  
25 were to testify along the lines you have indicated, Mr.

1 gtlm

7

2 Carroll, that my decision would be the same.

3           The fact that a man can drink a considerable  
4 amount of alcoholic beverages and still show no obvious  
5 signs of intoxication does not mean that he is intoxicated  
6 to the point that he is incapable of making rational  
7 decisions in matters of importance to himself. Instead,  
8 it tends to suggest just the opposite, because usually  
9 people who are intoxicated to the point where they are  
10 incapable of making rational decisions show it in some  
11 way: through slurring of speech, through staggering in  
12 their gait or some other physical manifestation.

13           The testimony of the two agents who were with  
14 the defendant for several hours on February the 7th,  
15 after he had allegedly consumed considerable quantities  
16 of alcohol, was that he showed no evidence whatever of  
17 intoxication either by any physical manifestation, such  
18 as impairment of his motor functions, but also that he  
19 seemed mentally alert and aware of what was going on and  
20 fully cognitive and perceptive.

21           Moreover, the fact that there were additional  
22 errors in the statement as actually transcribed may be  
23 due not to any error in the story as told by the defendant,  
24 but, instead, in the transcribing of that story into  
25 written form by one of the agents.

1 .gtlm

2 There are a number of very significant details  
3 of material fact in the statement which do correspond  
4 with the defendant's story, particularly with respect to  
5 the exact amount of the first check, the name of the payee  
6 and the circumstances of its cashing.

7 Under all the circumstances, I concluded that  
8 even if the evidence which counsel has indicated would be  
9 actually forthcoming, the Court would conclude from all  
10 of the other evidence that at the time he made the state-  
11 ment on February 7, 1975, the defendant was alert, aware,  
12 cognitive and rational and that his waiver of his Fifth  
13 Amendment privilege against self-incrimination and his  
14 confession were the products of informed volition and I,  
15 therefore, reconfirm my original decision denying the  
16 motion to suppress.

17 MR. BUCHWALD: Your Honor, we have two very  
18 brief matters that we might just address ourselves on  
19 the record:

20 The first, if we might, with the Court's  
21 permission, submit to your Honor a list of the 3500  
22 material that has already been turned over to counsel  
23 and ask that it be marked as a Court exhibit so that we  
24 have no need to read it entirely into the record.

25 THE COURT: All right.

1 gtlm

30

2 MR. SIEGEL: The Government calls its first  
3 witness, Ora Brewer.

4 MR. CARROLL: Your Honor, may we approach the  
5 bench for one minute?

6 THE COURT: All right.

7 (At the side bar.)

8 MR. CARROLL: Your Honor, in order to alleviate  
9 calling Mr. Brewer or Mr. Berry, I am willing to stipulate  
10 that they did not sign their checks and the endorsement  
11 was forged on the checks.

12 MR. SIEGEL: Your Honor, there is other evidence  
13 we need to bring in through those witnesses. I appreciate  
14 Mr. Carroll's stipulation --

15 THE COURT: What kind of evidence?

16 MR. BUCHWALD: Going to the question of knowledge.  
17 It will go to the question of knowledge.

18 MR. SIEGEL: The witnesses will be quite brief.

19 THE COURT: I assume you are just going to  
20 have him say that he never saw or heard of this man.

21 MR. SIEGEL: No, not simply that, your Honor.

22 THE COURT: All right. Make it brief.

23 MR. SIEGEL: I will.

24 (In open court.)

25 THE COURT: I might add just this one thing to

1 gtim

Brewer-direct

32

2 not on an indictment but on an information. It is similar  
3 to an indictment in the sense that both constitute only  
4 an accusation or charge which has no evidentiary value  
5 and which must be proven beyond a reasonable doubt.

6 O R A R. B R E W E R, called as a witness by the  
7 Government, having first been duly sworn, testified  
8 as follows:

9 DIRECT EXAMINATION

10 BY MR. SIEGEL:

11 Q Mr. Brewer, where did you live during the  
12 period June and July of 1974?

13 A I was in the Veteran's Hospital, Kingsbridge  
14 Road, 130 Kingsbridge Road.

15 Q And at that time, were you receiving checks  
16 from the United States Government?

17 A Yes, sir.

18 Q What kind of checks were these checks?

19 A I was receiving a small pension.

20 Q How often did you receive those checks?

21 A The pension was the first of the month, but I  
22 went and applied for social security, which I have a  
23 letter of award, if the young man will let me see my  
24 papers there.

25 Q For now, Mr. Brewer, can you just tell us,

1 gtlm Brewer-direct 33  
2 during the period on or about July 1st of that year,  
3 did you receive your social security check at that time?

4 A The first check was supposed to have been to  
5 me, which I have the letter of award, the first check  
6 was supposed to have been \$1,286, which I never saw.

7 Q I am going to show you now what has been marked  
8 as Government's Exhibit 1 for identification, and ask  
9 if you can identify that (Handing).

10 A This is my check, sir.

11 Q Could you look at the back side of that check?

12 A Yes, sir.

13 Q Is that your signature?

14 A No, sir.

15 Q Did you receive that check?

16 A No, sir.

17 Q Did you authorize anybody to sign it for you?

18 A No, sir.

19 Q Did you authorize anybody to negotiate that  
20 check for you in any way?

21 A No, sir.

22 Q What do you normally do with your checks when  
23 you receive them --

24 A Take them to patient fund and cash them down-  
25 stairs on the ground floor, sir.

1 gtlm

Brewer-direct

34

2 Q Do you know the defendant, William Goodjoin?

3 A Never seen that man before in my life, and  
4 that's the truth, so help me God.5 Q Did you ever authorize William Goodjoin to sign  
6 or negotiate this check for you?

7 A No, sir.

8 Q I show you now what has been marked as Government's  
9 Exhibit 2 for identification, and ask you to look at it  
10 (Handing).

11 A No, sir. This isn't even my handwriting.

12 Q Do you know what that is?

13 A It's an authorization, sir.

14 Q Did you write that letter?

15 A No, sir.

16 Q Is that your signature at the bottom of the  
17 letter?

18 A No, sir.

19 Q Mr. Brewer, have you been reimbursed for the  
20 check that you lost?

21 A No, sir.

22 Q And how long has it been now?

23 A Last year, sir.

24 MR. SIEGEL: I have no further questions of  
25 this witness.

1 gtlm

Hickey-direct

30

2 A I'm the owner of Hickey's Bar and Restaurant  
3 on Kingsbridge Road, in the Bronx, 149 West Kingsbridge  
4 Road.

5 Q How long have you been the owner of that bar?

6 A Six years as of April the 1st, 1976.

7 Q Have you ever come in contact with an individual  
8 named "William Goodjoin"?

9 A Yes.

10 Q Do you see him sitting here in court today?

11 A Yes.

12 MR. CARROLL: I concede the identification,  
13 your Honor.

14 MR. SIEGEL: May the record reflect --

15 THE COURT: Yes. It has been conceded.

16 Q Could you explain for the jurors the nature  
17 of the contact and the circumstances of it?

18 A I've known William Goodjoin from '73, part of  
19 '73 and '74. He was employed in the Veteran's Hospital  
20 and he frequently came to my place for lunch and  
21 occasionally in the afternoon, and I was in the habit  
22 of cashing his pay check from the Veteran's Hospital.

23 Q Did you ever cash any other checks for him?

24 A Yes. On one occasion that I recall.

25 Q What happened on that occasion, do you remember?

1 gtlm

Hickey-direct

40

2 A It was July of 1974. He asked me to cash a  
3 check.

4 He came into the bar and asked me to cash a  
5 check for a large amount. I believe it was \$1,286.70.

6 I looked at the check and I said, "It's not  
7 your check." I said, "I can't cash it. It's a very  
8 large check. It's not yours."

9 So he said, "This check belongs to a friend  
10 of mine at the Veteran's Hospital, a patient, and he  
11 asked me to cash it for him."

12 I said "No."

13 So he left and about an hour later he came  
14 back with a letter, and I glanced at the letter and the  
15 letter stated that it authorized William Goodjoin to  
16 cash the check for Brewer.

17 Q When he first brought the check in, he told  
18 you what?

19 A He told me the check belonged to a patient  
20 and a friend -- it was a friend of his at the Veteran's  
21 Hospital, a Mr. Brewer, I recall.

22 Q And he --

23 A He said he gave him the check and asked him  
24 if he could cash it for him.

25 So on his return he had this letter with him

2 and the letter authorized William Goodjoin to cash the  
3 check for Mr. Brewer and it was signed by Brewer and  
4 another name -- I don't recall the name -- as a witness.

5 It says, "Well, look, I will cash the check,  
6 but you will have to endorse it, also."

7 I turned the check over and he signed his name  
8 on the back.

9 So I said, "Look, I won't have the money until  
10 tomorrow. I will give you a portion of the money any  
11 day."

12 I gave him \$286.70 and the following day he  
13 returned and I gave him the remaining amount of money,  
14 which was a thousand dollars.

15 Q Why were you unable to give him all the money  
16 right then?

17 A I didn't have that kind of money and I was  
18 going to the bank the following day.

19 Q Did you charge the defendant anything for  
20 cashing this check?

21 A No.

22 Q Do you usually?

23 A No. It's part of my -- the business in my  
24 area is very competitive and this is part of my business  
25 promotion. I cash checks for the Veteran's Hospital.

101A

1 jtlm

Hickey-cross

59

2           A     Well, he asked me about the checks I cashed  
3     for Eddie Sumpter, under what circumstances, what he had  
4     said,--

5           Q     And what did you tell him?

6           A -- how long did I know Eddie Sumpter.

7           Q     And what did you tell him?

8           A     I told him that I had known Eddie Sumpter for  
9     possibly two years and I also told him that he played  
10   on our softball team and we were good friends and I was  
11   in the habit of cashing his pay check every two weeks  
12   he got paid from the Veteran's Hospital, as I cashed  
13   several checks on pay day, and then he came in and  
14   brought me checks occasionally and asked me to cash them.  
15   He said they belonged to patients of the V.A. and they  
16   asked him to cash it as a favor, and he signed the checks  
17   in my presence and I cashed the checks for him.

18           Q     Did Eddie Sumpter ever cash a check made  
19     payable to Mr. Goodjoin?

20           A     I don't recall.

21           Q     Is it possible?

22           A     It's possible, yes.

23           Q     I would like you to go back to the day that  
24     Mr. Goodjoin cashed Exhibit 1, which is the \$1286 check,  
25     and I would like you to tell me again exactly what

1 gtlm

Hickey-cross

60

2 happened that day.

3 What time of day was it, first of all?

4 A Well, to the best of my recollection, it would  
5 be around lunch time.

6 Q And when was this? Sometime in July, was it?

7 A In July, yes.

8 Q Did Mr. Goodjoin still work at the hospital at  
9 that time, if you know?

10 A Well, I assumed he did, yes.

11 Q And around lunch time he came into the bar?

12 A Yes.

13 Q And what happened?

14 A And he asked me if I would cash a check.

15 Q Did he show you the check at that time?

16 A He showed me the check, and I said, "It's  
17 a very large check. I cannot cash it." I said, "It's  
18 not yours." I said, "Where did you get the check?"19 He says, "It belongs to a patient, a friend  
20 of mine at the Veteran's Administration Hospital,"  
21 and he asked me to cash it for him.

22 I said, "I'm sorry, Bill, it's too large."

23 Then he left the bar and an hour later he  
24 came back with a letter and the letter stated that it  
25 authorized him to cash the check and the letter was

103A

1 gtlm Hickey-cross 61

2 signed by Brewer and another name.

3 So I said, "Okay, I'll cash the check for you,  
4 but you have to sign it," and he signed his name on the  
5 back of the check.

6 Q And Exhibit 2 is the letter, is that correct?

7 A Yes.

8 Q Did you question him as to where he obtained  
9 this letter?10 A No, I didn't. No, the fact that he signed  
11 his name on the back of it, I accepted that more readily  
12 than the letter. I was not concerned with the letter.

13 I believed I knew Mr. Goodjoin.

14 Q Had Mr. Sumpter ever presented a similar letter  
15 to you when he cashed any checks?

16 A Never.

17 Q Do you know Mr. Sumpter's handwriting?

18 A When he signed his name on the back of my  
19 check, yes. Otherwise I wouldn't recognize it. But when  
20 he signed it --21 Q You wouldn't be able to say that this is in  
22 Mr. Sumpter's handwriting or not?23 A No. But Eddie Sumpter had a very distinctive  
24 way of signing his name.

25 Q Did Mr. Goodjoin drink at your bar?

1 gtlm Hickey-cross 62

2 A Yes.

3 Q Excuse me, let us get back to the date the check  
4 was cashed.

5 Did you see a man named "Dunn"?

6 A No.

7 Q Do you know a man named "Dunn"?

8 A No.

9 Q Never heard of him?

10 A Never heard of him.

11 Q Did Mr. Goodjoin drink at your bar?

12 A Yes.

13 Q Still?

14 A No.

15 Q Is he a heavy drinker?

16 A I noticed that Mr. Goodjoin was drinking very  
17 heavily and seemed very upset after I discovered the  
18 check was stolen. Prior to that I don't recall seeing  
19 him drinking heavily.

20 Q What does he normally drink, let's say, before  
21 this period?

22 A Usually he drinks beer or Scotch.

23 Q This is when he was working at the hospital?

24 A Well, usually when he was working in the  
25 hospital he came in for lunch and sat in the back room

1 gtlm Berry-direct 69

2 T H O M A S J. B E R R Y, called as a witness by  
3 the Government, having first been duly sworn,  
4 testified as follows:

5 THE COURT: Let me ask the jury if they can  
6 see Mr. Berry from where they are sitting or would it  
7 be better to have Mr. Berry move over here to the other  
8 side?

9 Come right over here on the other side, if you  
10 will, please, Mr. Berry.

11 DIRECT EXAMINATION

12 BY MR. SIEGEL:

13 Q Mr. Berry, where did you live in October of  
14 1974?

15 A At the Bronx V.A. Hospital.

16 Q And at that time, were you receiving checks  
17 from the United States Government?

18 A Yes.

19 Q What kind of checks were those?

20 A They were disability checks from the V.A.

21 Q And how often did you get those checks?

22 A Once a month.

23 Q What did you do with the checks when you got  
24 them?

25 A I took them to the finance office within the

1 gtlm

Berry-direct

70

2 hospital and I cashed them there.

3 Q Did you do that by yourself?

4 A Yes.

5 Q Were you able to get down there?

6 A Yes, most of the times.

7 Q Directing your attention to October of 1974,

8 Mr. Berry, did you receive a disability check from the  
9 Government for the month of October?

10 A No.

11 Q I show you now what has been marked as Government  
12 Exhibit 4 for identification, and ask if you recognize  
13 that (Handing).

14 A Yes, I recognize it.

15 Q What is it?

16 A It's the V.A. check with my name.

17 Q Who is it made out to?

18 A To me, Thomas J. Berry.

19 Q Did you ever receive that check?

20 A No.

21 Q Is that your signature on the back?

22 A No.

23 Q Did you ever authorize anybody to sign it?

24 A No.

25 Q Do you know William Goodjoin?

1 gtlm

Berry-direct

71

2 A No.

3 Q Did you ever authorize William Goodjoin to cash  
4 the check?

5 A No.

6 Q Do you know Eddie Sumpter?

7 A No.

8 Q How about John Dunn?

9 A No.

10 Q Did you ever authorize any of those people to  
11 cash the check?

12 A No.

13 Q Have you received a replacement for that check  
14 yet?

15 A Yes.

16 Q How long did it take?

17 A A year.

18 MR. SIEGEL: I have no further questions.

19 MR. CARROLL: The defendant has no cross-examina-  
20 tion, your Honor.

21 THE COURT: All right.

22 Thank you, Mr. Berry.

23 (Witness excused.)

24 MR. SIEGEL: The Government would call at this  
25 time Arthur Leis.

1 gtlm

Marquez-direct

140

2 A Yes, they do.

3 MR. SIEGEL: Your Honor, I offer 13A and 13B in  
4 evidence at this time.

5 THE COURT: Very well.

6 Any objection?

7 MR. CARROLL: No objection, your Honor.

xxx

8 (Government Exhibits 13A and 13B for identifica-  
9 tion received in evidence.)10 MR. SIEGEL: I would like to have the jury  
11 see these photos.

12 (Pause.)

13 THE COURT: Go right ahead, Mr. Siegel.

14 MR. SIEGEL: Your Honor, at this time I would  
15 like to read the statement made by the defendant to  
16 Agent Marquez on February 7th.17 I am going to read to you now, ladies and  
18 gentlemen, from the statement made by the defendant on  
19 February 7th, Government Exhibit 12.20 I will not read to you the form. It is typed  
21 on a Secret Service paper which contains a statement of  
22 the defendant's rights. This is not the advice of rights  
23 which the defendant himself was first read; that is a  
24 separate document, and I won't read this part of it again.

25 The statement reads as follows:

1 gtlm

Marquez-direct

141

2 "On or about October, 1974, an associate named  
3 Eddie Sumpter (Phonetically) approached me and asked me if  
4 I wanted to make some money, and, if I could cash a check  
5 at Hickey's Bar, 149 W. Kingsbridge Rd., Bronx, New York.  
6 I told him that I needed money and I thought I could cash  
7 the check. Approximately two days later, Eddie & I were  
8 at Hickey's Bar when a person whom I know as Dunn drove  
9 up to the bar. He was driven by his brother who is a  
10 cripple that receives treatment at the Veteran's Hospital  
11 on Kingsbridge Rd. I believe that the brother's name is  
12 Dave.

13 "At this time, Dunn entered the bar and handed  
14 Eddie an envelop. Eddie then turned away from me,  
15 borrowed my pen and wrote something, then he gave me the  
16 envelop in which I found a check for twelve hundred and  
17 eighty-six (\$1286) dollars made payable to an Ora Brewer.  
18 I then took the check to Mike Hickey, the owner of the  
19 bar, and asked him to cash it, telling Hickey that the  
20 payee asked me to cash the check for him. Hickey  
21 refused, at first, because of the amount of the check  
22 and asked me who I got it from. I told Hickey that I got  
23 it from Eddie who got it from the payee, who is a  
24 cripple and could not cash it himself. Hickey then asked  
25 Eddie about the check and Eddie told him the same story,

1 gtlm

Marquez-direct

142

2 however, Hickey still did not want to cash the check.

3 At this time, Eddie went outside to the telephone booth  
4 on the street and waited while I told Hickey that I was  
5 going to call the payee. I then called Eddie at the  
6 phone booth and he talked to Hickey and told him that he  
7 was Brewer and that it was all right to cash his check.

8 "Hickey then cashed the check and gave me about  
9 \$200 and told me that I could pick up the balance the  
10 next morning which I did. After receiving the remaining  
11 proceeds of the check from Hickey the following day, I  
12 met Eddie late that afternoon and turned the money over  
13 to him.

14 "On or about November, 1974, Eddie met me in  
15 the V.A. Hospital on W.Kingsbridge Rd., Bronx, N.Y.,  
16 at which time he had in his possession a V.A. check worth  
17 approximately \$600.00, which he asked me to cash. After  
18 several unsuccessful attempts to negotiate the check, I  
19 finally deposited it into my savings account at the  
20 Knickerbocker Savings and Loan on Boston Rd., Bronx, N.Y.  
21 When Eddie asked me about the check, I told him that the  
22 bank would not let me make a withdrawal on it until the  
23 check cleared five days later, however, I never gave  
24 Eddie any of the proceeds of this check and spent the  
25 entire amount myself. I also second endorsed this check

2 in my own name when I deposited it, since the payee's  
3 name was already on the check when I got it from Eddie.

4 "On or about December, 1974, Eddie again  
5 presented me with a V.A. check which he asked me to cash,  
6 for about \$260.00. I took this check to O'Leary's Bar  
7 located at Boston Rd. and Eastchester Rd., Bronx, N.Y.  
8 I owed the bar \$100.00 on my bar bill, so the owner, Dan  
9 O'Leary, deducted the \$100.00 returning the difference  
10 to me. This check was already endorsed when I received  
11 it and I never gave Eddie any of the money from this  
12 check either.

13 "On or about January, 1975, I went directly  
14 to see Dunn, whom I found out worked in the mail room  
15 of the Veteran's Hospital on W. Kingsbridge Rd., Bronx,  
16 N.Y., and asked him if he had anything for me. Dunn told  
17 me to return after lunch, and at approximately 2:30 p.m.,  
18 I met him in Building "D" of the hospital where he handed  
19 me a white envelop containing a V.A. check which was  
20 signed in the payee's name and worth about \$300.00. Since  
21 I was unable to cash this check in the local bars, I  
22 again made a deposit into my bank account at the Knicker-  
23 bocker Savings and Loan. Later, Dunn questioned me about  
24 the check, however, I again kept the entire proceeds of  
25 the check for myself.

1 gtlm

Marquez-direct

144

2 "On or about February 6th, 1975, I called  
3 Dunn at the V.A. Hospital and told him that I was short  
4 on money. He asked me if I wanted to cash a check and  
5 I stated that I was interested, whereupon, Dunn told me  
6 to return to the hospital the next day.

7 "On or about February 7th, 1975, I met Dunn at  
8 the V.A. Hospital on W. Kingsbridge Rd., Bronx, N.Y.,  
9 at which time he advised me that although he did not have  
10 a check at present, he would contact me when he got his  
11 hands on one.

12 "According to my knowledge, Dunn takes these  
13 checks from patients that have died or left the hospital.  
14 In addition, Dunn and I have an agreement that if I cash  
15 a check, I will receive 40% of the face value of the check  
16 while Dunn receives the remaining 60%."

17 Again, these pages have been signed by the  
18 defendant and the agents.

19 Q Agent Marquez, is it your testimony that when  
20 the defendant made this statement to you on February 7th --

21 MR. CARROLL: Objection, your Honor. It is a  
22 leading question from the sound of it right now.

23 THE COURT: I am going to sustain the objection.  
24 Rephrase it, if you will.

25 Just say made a statement to you and that will

1 gtlm

Marquez-direct

145

2 be all right.

3 Q Agent Marquez, is it your testimony that the  
4 defendant made a statement to you on February 7th in  
5 which he told you that he agreed to cash the Ora Brewer  
6 check after being asked if he wanted to make some money?

7 MR. CARROLL: Your Honor, I object. The state-  
8 ment says what it says.

9 THE COURT: Sustained.

10 Q Agent Marquez, what did the defendant tell you  
11 on February 7th about what he told Michael Hickey when  
12 he asked him to cash the check?

13 MR. CARROLL: Objection, your Honor. Again,  
14 the statement says what it says and we had the witness  
15 testify yesterday as to this entire conversation.

16 THE COURT: My understanding was that you  
17 disputed that he made the statements that are reported  
18 in that exhibit. Don't you?

19 MR. CARROLL: Well, your Honor, I am going to  
20 dispute them, yes. But the witness testified about this  
21 yesterday at length.

22 THE COURT: He is asking now a specific detail  
23 of the statement and I am going to overrule the objection.

24 MR. SIEGEL: Can I have the question read back?  
25 No, I will ask it again.

1 gtlm

Marquez-direct

146

2 Q Agent Marquez, what, if anything, did the  
3 defendant tell you on February 7th that he told Michael  
4 Hickey when he asked him to cash the check for him?

5 MR. CARROLL: Your Honor, again, I object. The  
6 question is leading. I mean, it is Hickey. He should  
7 ask him what he told him.

8 Why does he have to lead him as to what he  
9 wants him to answer?

10 THE COURT: I am going to overrule the objection.

11 He has to direct his attention to the subject  
12 he was speaking about.

13 A In regards to the first check, the Ora Brewer  
14 check, the defendant told me that he first went to Michael  
15 Hickey and told him he had gotten the check from the  
16 payee and that he was cashing it for the payee.

17 Q And did he give you any reason for telling  
18 Eddie Sumpter that he would cash the check?

19 MR. CARROLL: Again, I object, as leading.

20 THE COURT: Overruled.

21 He is just directing his attention to the  
22 subject so that the witness will know what part of the  
23 conversation Mr. Siegel is asking about.

24 A Monetary reasons. Eddie had offered him some  
25 money for cashing the check and he accepted.

1 gtlm

Marquez-direct

147

2 Q Directing your attention to the second check  
3 that the defendant told you about, what did he tell you  
4 that he did with the money which he withdrew from the  
5 account?

6 MR. CARROLL: Your Honor, I missed the first  
7 part of that question.

8 Are we talking about the second check?

9 MR. SIEGEL: Yes.

10 MR. CARROLL: Thank you.

11 A He kept the proceeds of the check for himself.

12 Q Did he tell you where this man named "Dunn" got  
13 the checks?

14 A Yes, he did.

15 Q And where did he tell you Dunn got the checks?

16 THE COURT: You covered that yesterday.

17 Q Did he tell you about an agreement that he  
18 and Dunn had?

19 A Yes, he did.

20 MR. CARROLL: Objection, your Honor.

21 THE COURT: I don't believe he covered any  
22 agreement between himself and Dunn yesterday.

23 MR. CARROLL: Again, I object on the grounds  
24 it is leading, the statement covers it and I think it  
25 was covered yesterday.

1 gtlm Marquez-direct/cross 148

2 THE COURT: Overruled.

3 Q What did he tell you about any agreement?

4 A That they had a 40/60 relationship agreement  
5 with regards to the proceeds of any checks that Mr.  
6 Goodjoin would cash for Mr. Dunn.

7 Q Did he explain to you why it was a 40/60 split  
8 rather than a 50/50 split?

9 MR. CARROLL: Again I object, your Honor, as  
10 leading.

11 THE COURT: Overruled.

12 A I don't recall if he did or not.

13 MR. SIEGEL: I have no further questions.

14 THE COURT: All right. Mr. Carroll.

15 MR. CARROLL: Yes, your Honor.

16 May I have one moment, please?

17 THE COURT: Surely.

18 (Pause.)

19 CROSS-EXAMINATION

20 BY MR. CARROLL:

21 Q Agent Marquez, yesterday you identified Exhibit  
22 13 as a photograph taken of Mr. Goodjoin on February  
23 7th?

24 A Yes, sir.

25 Q And it is a photograph of him approximately

1 gtlm

Marquez-cross

177

2 Q Well, it is not reflected in the bankbook?

3 A It's not reflected in this bankbook, yes.

4 Q Well, if that is actually the fact, then Mr.  
5 Goodjoin owed Mr. Dunn quite a bit of money.

6 A Correct.

7 Q Did you not testify yesterday that when Mr.  
8 Goodjoin called you on the 6th he told you that he wanted  
9 to get revenge at Dunn because Dunn owed him a lot of  
10 money?

11 A Yes.

12 Q When Mr. Goodjoin called you on February 6th,  
13 did you have any information at all about a check-cashing  
14 ring up at the V.A. Hospital in the Bronx?

15 A None.

16 Q You knew nothing about it?

17 A No.

18 Q Did you consider this a good lead from Mr.  
19 Goodjoin if what he said was correct?

20 A Very good lead.

21 Q He was your only source of information at that  
22 time, is that correct?

23 A At that point, correct.

24 Q Did you attempt to go further with your use  
25 of Mr. Goodjoin?

1 gtlm

340

2 THE UNITED STATES OF AMERICA

3 vs.

75 Cr. 1121

4 WILLIAM R. GOODJOIN

5 December 24, 1975  
6 9:30 a.m.

7 (Trial resumed.)

8 (In open court; jury present.)

9 THE COURT: I thank you all for getting here  
10 early and on time, that is, earlier than our usual  
11 schedule.

12 I am going to charge the jury.

13 THE CLERK: The Court is about to charge the  
14 jury. Please remain seated until the completion of the  
15 Court's charge.

16 Marshal, would you lock the courtroom doors.

17 CHARGE OF THE COURT18 THE COURT: We have now come to that part of  
19 the case where all the evidence is in. As members of  
20 the jury, you are the sole and exclusive judges of the  
21 facts in the case. You pass upon the weight of the evidence,  
22 you determine the credibility of the witnesses, you  
23 resolve such conflicts as there may be in the evidence  
24 and you draw such reasonable inferences as may be warranted  
25 by the evidence.

2 My function at this point is to instruct you  
3 as to the law that is applicable to the case. It is  
4 your duty, indeed, your sworn duty as jurors, to accept  
5 the law as I explain it to you in these instructions and  
6 to apply it to the facts as you find them. Your verdict  
7 is the logical result of applying the legal standards  
8 as I give them to you to the facts as you find them.

9 In determining the facts, you rely only upon  
10 the evidence in the case. It is your recollection of  
11 the evidence and yours alone that governs. Anything  
12 that counsel may have said in their opening statement  
13 or in their summation or at any time during the trial is  
14 not evidence in the case. Anything that I may have said  
15 in my opening remarks or in these instructions or at  
16 any time during the case, either in ruling upon an  
17 objection or otherwise, is not evidence in the case. It  
18 shouldn't be substituted by you for your own recollec-  
19 tion of the evidence.

20 The evidence, as I have already told you, on  
21 which your verdict will be based is the testimony of the  
22 witnesses from the stand, the exhibits that have been  
23 introduced into evidence and the stipulations or agree-  
24 ments of fact entered into by counsel.

25 I don't want you to try to form any impression

1 gtlm  
2 based on anything I have said during the trial or any way  
3 in which I said anything that I said concerning how I  
4 feel about the case. My impressions of the case are  
5 entirely irrelevant. It is your determination of the  
6 facts, based on the evidence will determine the  
7 outcome of the case.

8                 If you cannot recall any of the evidence or  
9 if two jurors have different recollections about the  
10 evidence and you want to hear any part of it again, you  
11 may do so simply by sending a note out to me through the  
12 marshal who will be posted at the door of the Jury Room  
13 to prevent you from being disturbed, and the court reporter  
14 will reread the part of his notes that you are interested  
15 in.

16                 Likewise, if you want to have in the Jury Room  
17 with you during your deliberations any of the exhibits  
18 that were introduced in evidence during the trial, you  
19 merely have to ask by sending a note out to me and we  
20 will be glad to send those exhibits in to you for you  
21 to have them in hand to look at.

22                 The law presumes the defendant to be innocent  
23 of the crime of which he is charged, so even though he  
24 stands here as accused, he begins the trial with a clean  
25 slate with no evidence at all against him and no presumption

1 gtlm

343

2 against him merely based upon the fact that an information  
3 has been lodged against him by a Government official.  
4 That information is only the means by which the case gets  
5 started. It is the pleading of the Government in the  
6 case, a statement of what the Government expects to  
7 prove. You will be the judge of whether the Government  
8 has actually proved the charges made in the information.  
9 And every one of the charges in the information must be  
10 proven beyond a reasonable doubt.

11 The defendant, because he is presumed to be  
12 innocent, is not required to put in any evidence at all  
13 against the charge if he chooses not to do so. He may  
14 elect to do so, but he doesn't have to do so and the  
15 fact that he fails to do so can't be taken by you as an  
16 indication that he is guilty.

17 As I told you earlier, the presumption of  
18 innocence and the right to remain silent wouldn't be  
19 worth anything if you could assume from the fact that a  
20 defendant did remain silent that he must be guilty. He  
21 doesn't have to take the stand. He doesn't have to say a  
22 word. He can let the Government attempt to prove its  
23 case against him beyond a reasonable doubt and you are  
24 not to draw any inference from the fact that he elected  
25 in this case not to take the stand. That is not the basis

1 gtlm

344

2 of any inference of his guilt and shouldn't take any  
3 part in your deliberations at all.

4 Now, I have indicated to you that every material  
5 fact on which the Government relies must be proven beyond  
6 a reasonable doubt.

7 What is a reasonable doubt?

8 Well, the words almost define themselves. A  
9 reasonable doubt is a doubt based upon reason or upon  
10 common sense and arising from the evidence or the lack of  
11 evidence. It is a doubt which a reasonable person has  
12 after carefully weighing all of the evidence.

13 It is not required that the Government prove  
14 guilt beyond all possible doubt or to a mathematical  
15 certainty. If that were the test, few, if any, defendants  
16 however guilty could ever be convicted, because in the  
17 real world it is rarely possible to prove anything to an  
18 absolute certainty.

19 Proof beyond a reasonable doubt is proof of  
20 such convincing character that you would be willing to  
21 rely upon it to act upon it in the most important matters  
22 in your own life.

23 Putting it more plainly, if you are confronted  
24 with an important decision and if after reviewing all of  
25 the pertinent factors you are beset by doubt and uncertainty

gtlm

345

2 and you are unsure of your judgment, then you have a  
3 reasonable doubt.

4 If after a fair and impartial consideration  
5 of all of the evidence in the case you can candidly and  
6 honestly say that you are not satisfied of the guilt of  
7 the defendant to the extent that you have an abiding  
8 conviction of his guilt, then you do have a reasonable  
9 doubt, and in that circumstance it is your duty to find  
10 the defendant not guilty.

11 On the other hand, if after such a fair and  
12 impartial consideration of all the evidence you can  
13 candidly and honestly say that you are satisfied of the  
14 guilt of the defendant to the extent that you have an  
15 abiding conviction of his guilt, such a conviction as  
16 you would be willing to act upon it without fear in  
17 matters of great importance in your own personal life,  
18 then you have no reasonable doubt and you should find  
19 him guilty in that circumstance.

20 The defendant should not be convicted on mere  
21 suspicion or conjecture, nor should he be acquitted or  
22 found not guilty on the basis of sympathy. Your verdict  
23 should be based upon the evidence and it should be  
24 reached objectively and fairly without consideration  
25 that we have the U.S. Government on one side and an

1 gtlm

2 individual defendant on the other.

3 Weigh the evidence just as dispassionately and  
4 as coolly and objectively as you can and determine whether  
5 or not the Government has proven each of the essential  
6 elements of the offense beyond a reasonable doubt as I  
7 have defined it to you.

8 Now let us look at the information in this  
9 case.

10 The information contains two counts. Each  
11 count states a separate offense and each count must be  
12 considered separately. The two counts are absolutely  
13 independent of each other and you must find the defendant  
14 guilty or not guilty on each of the two counts.

15 You may find him guilty on both, not guilty on  
16 both or guilty on one and not guilty on the other. And  
17 don't let your finding as to one count affect your finding  
18 on the other. You must consider each absolutely  
19 independently of the other.

20 Count 1 reads as follows:

21 "On or about the 5th day of July, 1974 --" now,  
22 before I go any further, I want to say that I understand  
23 that that date should actually be the 3rd day of July,  
24 1974.

25 Is that correct?

2 MR. BUCHWALD: Yes, your Honor. The 3rd or the  
3 2nd.

4 THE COURT: The information reads "On or about  
5 the 5th day of July, 1974," so that you don't have to find  
6 that he actually did the things charged in Count 1 on the  
7 5th day of July, and I charge you as a matter of law that  
8 the 3rd day of July is on or about the 5th day of July  
9 and that this discrepancy between the information and  
10 the actual evidence is an immaterial variation between the  
11 charge and the evidence.

12 You will have to determine, however, whether  
13 all of the other things charged in here have been proven  
14 beyond a reasonable doubt.

15 The information continues:

16 "In the Southern District of New York, which  
17 includes the Bronx and Manhattan, William R. Goodjoin,  
18 the defendant, unlawfully, willfully and knowingly, with  
19 intent to defraud the United States, uttered and published  
20 and caused to be uttered and published as true a false,  
21 forged and counterfeited writing, namely, the endorsement  
22 of the payee on a check, knowing the same to be false,  
23 forged and counterfeited, the check being a genuine  
24 obligation of the United States as follows:

25 "A xerographic copy of the check, front and

1 gtlm

348

2 back, are attached."

3 Then there is a reference to a section of the  
4 United States Code which defines this offense, and I will  
5 read to you in a moment the wording of that section.

6 Now let us go to Count 2.

7 Count 2 is identical in its wording but concerns  
8 a different transaction, that is, a different check and  
9 a different date.

10 It reads as follows:

11 "On or about the 9th day of October, 1974, in  
12 the Southern District of New York, William R. Goodjoin,  
13 the defendant, unlawfully, willfully and knowingly, and  
14 with intent to defraud the United States, uttered and  
15 published as true a false, forged and counterfeited  
16 writing, namely, the endorsement of the payee on a check,  
17 knowing the same to be false, forged and counterfeited,  
18 the check being a genuine obligation of the United States  
19 and of the following or as follows:"

20 Then there is attached a xerographic copy of  
21 the front and back sides of the check and a citation to  
22 the same section.

23 The first check that is attached to Count 1 is  
24 the check of the Treasurer of the United States to the  
25 order of Ora R. Brewer, care of V.A. Hospital, Kingsbridge

1 gtlm

349

2 Road in the Bronx, in the amount of \$1286.70, and on the  
3 back there is an endorsement which reads "Ora R. Brewer,"  
4 and that is the endorsement which the Government alleges  
5 to be false.

6 In addition there is the endorsement "William  
7 Goodjoin." And I think it is not disputed that the  
8 defendant William Goodjoin did add that second endorsement  
9 and did cash the check.

10 The real question, as I will explain to you in  
11 a moment, is whether at that time he knew the first  
12 endorsement, "Ora R. Brewer," to be a false or forged  
13 endorsement.

14 The other check which is referred to in Count  
15 2 is the check of the Treasurer of the United States to  
16 the order of Thomas J. Berry, V.A. Hospital, Kingsbridge  
17 Road, The Bronx, in the amount of \$620, and it bears on  
18 the back a first endorsement "Thomas J. Berry," and that  
19 is the endorsement which the Government alleges to be  
20 false, and then there is the endorsement "William Goodjoin."

21 I understand that there is no dispute that Mr.  
22 Goodjoin did put ... the second endorsement and did deposit  
23 the second check to his savings account in the Knickerbocker  
24 Savings Bank. The only question, as I will explain to  
25 you in a moment, is whether at that time he knew that

1 gtlm

350

2 the first endorsement, that of Thomas J. Berry, was false  
3 or forged.

4 So we have two counts which are identical,  
5 except that they relate to the two different checks, the  
6 first check in the amount of \$1286.70, which was endorsed  
7 by the defendant and cashed at Hickey's Bar in July of  
8 1974; and the second check for \$620, which was, I believe  
9 the evidence shows, endorsed by the defendant and deposited  
10 to his savings account in the Knickerbocker Savings Bank.

11 I indicated to you that I would read to you the relevant  
12 part of the statute that is referred to in both counts.

13 It is Section 495 of Title 18 of the United States Code,  
14 and the relevant part of that statute reads as follows:

15 "Whoever utters or publishes as true any false,  
16 forged, altered or counterfeited writing with intent to  
17 defraud the United States, knowing the same to be false,  
18 altered, forged or counterfeited, is guilty of a crime,"  
19 and they define the punishment for that crime which you  
20 needn't be concerned with, which I will tell you a little  
21 more in a moment.

22 As I read that statute you may have noted that  
23 it contains a number of requirements that the Government  
24 must meet in order for you to find the defendant guilty.

25 In order to find the defendant guilty on each

2 of the two counts, you must be satisfied beyond a  
3 reasonable doubt of each of the following four elements  
4 of the offense:

5 First, that on or about the date charged in the  
6 information the defendant uttered or published a certain  
7 writing, that is, an endorsement on a United States  
8 Treasury check.

9 Second, that the check contained a false, forged,  
10 altered or counterfeited writing, namely, the signature  
11 of the payee as the first endorsement on the back of the  
12 check.

13 We are not talking now about Mr. Goodjoin's own  
14 endorsement. We are talking about the first endorsement  
15 in the name of the payee, Ora R. Brower, in the case of  
16 the first check; and Thomas J. Berry in the case of the  
17 second check.

18 Third, that the defendant knew the check con-  
19 tained the false, forged, altered or counterfeited  
20 signature. In other words, that the defendant knew at the  
21 time he cashed : deposited the check that the first  
22 endorsement was false or forged.

23 And fourth, that the defendant intended to  
24 defraud the United States.

25 I will analyze those four elements separately

1 gtlm

352

2 for you.

3                 With respect to the first element, as I told  
4 you, you must be satisfied beyond a reasonable doubt that  
5 the defendant uttered or published the check in question.

6                 The terms "uttered or published as true" simply  
7 mean passed or negotiated or cashed or deposited or gave  
8 to another person with the intent that the recipient  
9 believe that the writing is true.

10                As I have indicated, the writing in this case  
11 is the signature of the payee, the endorsement of the name  
12 of the payee on the back of the check, which the Government  
13 alleges is false or forged.

14                In this case, I do not believe it is disputed  
15 that the first endorsements are, in fact, false or forged.

16                There was the testimony of each of the two  
17 payees, Brewer and Berry, that they never saw those checks  
18 and that that was not their signature on the back of the  
19 checks. So I think there is no substantial doubt that  
20 there was a false or forged first endorsement on each  
21 of the checks at the time the defendant either cashed them  
22 or deposited them.

23                But we now come to the third element of the  
24 offense, and that is the defendant's knowledge. And this  
25 is the critical element with respect to each count.

2 You must find beyond a reasonable doubt if you  
3 are going to return a verdict of guilty that the defendant,  
4 at the time he cashed or deposited the check, knew that  
5 the first endorsement was false or forged.

6 The fourth element is that you must find beyond  
7 a reasonable doubt that the defendant intended, when he  
8 cashed or deposited the check, to defraud the United  
9 States. This is to say that at the time the defendant  
10 cashed or deposited the check he intended that at sometime  
11 one or more persons or businesses, including a bar or a  
12 bank, would receive the forged checks or the checks with  
13 the forged endorsements in payment for goods or services  
14 or deposit credits and would receive the checks on the  
15 assumption that the endorsements were genuine and without  
16 any knowledge that the first endorsements in each case  
17 were, in fact, forged.

18 It is not necessary that the defendant have in  
19 mind any particular persons or companies or banks that  
20 would be the ones who would be defrauded or to whom the  
21 check would ultimately be passed as true and genuine, nor  
22 does the Government have to prove that the defendant  
23 actually caused anyone to suffer a pecuniary loss. It is  
24 only necessary that the Government prove beyond a reasonable  
25 doubt that at the time he passed the checks in question

1 gtlm

354

2 the defendant intended that someone at sometime would be  
3 defrauded by receiving a check which contained a fraudulent  
4 endorsement assuming that the endorsement was valid.

5 It is not necessary for the Government to show  
6 that the Government has suffered any pecuniary loss. It  
7 is sufficient if the Government establishes beyond a  
8 reasonable doubt that at the time he cashed or deposited  
9 the checks, or I should say the check in question, because  
10 you're going to consider each of these two transactions  
11 separately, the defendant intended to impair the admin-  
12 istration of a governmental function, in this case the  
13 issuance of a United States Treasury check to proper  
14 persons in payment of veteran's compensation benefits  
15 or disability insurance benefits or other amounts coming to  
16 them from the United States.

17 There is no question in this case that we have  
18 here checks which are obligations of the United States  
19 which were validly issued to Ora Brewer in the case of  
20 Count 1 and to Thomas Berry in the case of Count 2. There  
21 is no question that the first endorsement in the name  
22 of Brewer in the case of the first check and in the name  
23 of Berry in the case of the second check is a false or  
24 forged endorsement.

25 The only real question that I think you will

1 gtlm

2 have to decide is whether at the time he cashed or  
3 deposited those checks the defendant knew that the first  
4 endorsement was false or forged.

5 Now, this matter of the defendant's knowledge  
6 is not an easy thing to decide. I can't ask the jury to  
7 be mind readers and no one can expect you to be mind  
8 readers. You can't really look into a person's mind and  
9 find out what he was actually thinking.

10 In order to determine what a person is thinking,  
11 therefore, you have to rely on circumstantial evidence.  
12 You have to rely on all of the facts and circumstances,  
13 including his conduct.

14 So I want you to take into consideration all  
15 of the evidence that there is in the case that will  
16 enable you to draw an inference or to make a reasonable  
17 assumption as to what the defendant was thinking.

18 Now, bear in mind, you must find beyond a  
19 reasonable doubt what was in his mind, what he intended,  
20 before you can find him guilty. But you can find his  
21 intention beyond a reasonable doubt based upon circum-  
22 stantial evidence, including evidence of his conduct and  
23 all of the other evidence in the case.

24 Direct proof of his actual state of mind is,  
25 of course, impossible and unnecessary.

2                   The element of knowledge may be satisfied by  
3                   proof beyond a reasonable doubt that the defendant acted  
4                   in reckless disregard of knowledge that he had or, in  
5                   other words, that he deliberately closed his eyes to  
6                   what would have been obvious to a reasonable man in his  
7                   position.

8                   If you find beyond a reasonable doubt that the  
9                   defendant did act in reckless disregard of facts that  
10                  were known to him at the time he cashed the checks or  
11                  that he deliberately closed his eyes to what should have  
12                  been obvious to him, then you may find that he acted  
13                  with the necessary intent to defraud.

14                  We have here in this case evidence concerning  
15                  statements made by the defendant to agents of the Secret  
16                  Service. We have the oral testimony of Agent Marquez,  
17                  one of the agents who was with the defendant over a period  
18                  of several hours on February 7th, 1975, and we have as  
19                  Government Exhibit 12 a transcript or what purports to  
20                  be a transcript of the statements made by the defendant  
21                  to Agents Hemmer and Marquez which Agent Hemmer is said  
22                  to have typed up and which the defendant thereafter  
23                  signed.

24                  Admissions of a defendant, if you believe they  
25                  were actually made, of course, may constitute very strong

2 evidence against the party making those admissions.

3                 The defendant in this case has, through the  
4 testimony of the bartender O'Leary and in certain other  
5 ways, suggested that at the time he made those admissions  
6 he had been drinking and that he was subject to suggestion,  
7 to being easily led and that, therefore, the statements  
8 that he made are not entitled to the weight that they  
9 would be entitled to under other circumstances.

10               Now, you as the jurors will have to determine  
11 exactly what weight those statements, oral and written,  
12 are entitled to. You will determine whether or not the  
13 defendant at the time he made those statements was acting  
14 entirely rationally, in control of exactly what he was  
15 doing, whether he knew what he was saying, whether he was  
16 responsible for what he was saying and whether, therefore,  
17 the statement should be given full weight or whether, on  
18 the other hand, considering all the circumstances in the  
19 case, that statement should be entitled to little or  
20 no weight. You will have to determine the weight, if  
21 any, to which you believe it is entitled.

22               Agent Hemmer didn't testify and Agent McLain  
23 didn't testify, even though they were present during some  
24 or all of the interrogation.

25               The mere fact that the Government failed to

2 call additional witnesses it might have called shouldn't  
3 be taken by you as an inference that the testimony of  
4 those witnesses would have been unfavorable to the Govern-  
5 ment if the testimony of those witnesses would have been  
6 merely cumulative, in other words, would merely have been  
7 substantially a repetition or corroboration of what the  
8 witness Marquez testified.

9                 On the other hand, the failure to call a witness  
10 who could have told other things than what a witness who  
11 did testify said on the stand may be taken by you as an  
12 inference with respect to the testimony of that witness.

13                 As I indicated to you earlier, you are not to  
14 consider the kind of punishment that the Court might  
15 impose if you find the defendant guilty. That is a matter  
16 for the Court to determine. It is one of the most  
17 unpleasant duties that a court has to perform, but it is  
18 a duty which the Court must perform and it is not a matter  
19 which should concern you in the least.

20                 I can assure you that if you find the defendant  
21 guilty and he is entitled to leniency, he will receive it.  
22 If he is not, he won't. So don't worry about what punish-  
23 ment he might get. Don't acquit him simply because you  
24 think he is entitled to a lenient punishment.

25                 If you find him guilty beyond a reasonable doubt,

1 gtlm

2 then you find him so. If, on the other hand, you find  
3 any reasonable doubt in the proof as to any of the elements  
4 of the offense as I have defined them to you, then you  
5 find him not guilty. Don't worry about the consequences  
6 of those verdicts. You base your verdict upon the  
7 evidence and only upon the evidence and don't allow  
8 sympathy or antagonism or any personal prejudice you  
9 might have get in the way of your rendering an absolutely  
10 fair and impartial verdict.

11 In the course of reaching your verdict you will  
12 have to determine the credibility of the witnesses, as  
13 I indicated to you earlier.

14 Well, how do you determine the credibility or  
15 believability of a witness?

16 You use your common sense. You do it as a juror  
17 exactly the same way you would do it in your everyday lives.

18 How do you know whether a friend of yours or a  
19 business acquaintance is telling the truth? You use  
20 the same test to determine whether a witness is telling  
21 the truth. You size the man up. What kind of person is  
22 he? Is he a man who seems by his character and all of  
23 his conduct in the past to be worthy of your belief?

24 Does he seem at the time he is talking to you  
25 to be telling the truth? Does he look you in the eye?

2 Does he seem frank and candid and open, or is he evasive?  
3 Does the story that he tells make sensé? Is it plausible?  
4 Does it hang together? Is it contradicted to any extent  
5 by other evidence in the case? Does it do violence to  
6 your common sense? Does the person who is telling you  
7 this story have any personal motivation or incentive to  
8 falsify?

9 You use the same tests on a witness on the  
10 stand. What is his angle? What has he got to gain from  
11 falsifying his story?

12 If you find that a witness testified falsely  
13 about any point, then you will have to determine what  
14 weight to give the remainder of his testimony. It will  
15 be up to you. You can either say, "Because he testified  
16 falsely in one respect, I am not going to believe anything  
17 that man said"; or, you can say, "I believe that he  
18 testified falsely in that respect, but the rest of his  
19 testimony I believe."

20 It's up to you to determine how much weight to  
21 give the rest of the testimony of a man who has testified  
22 falsely in one respect.

23 Of course, what I have just said refers to  
24 witnesses who intentionally testify falsely. Every  
25 witness from time to time, just like every person from

1 gtlm

361

2 time to time, will make an inadvertent misstatement, and  
3 you should take into account when you determine the  
4 credibility of that witness whether his misstatement was  
5 inadvertent or whether it was an intentional falsifica-  
6 tion.

7 Now, I have already indicated to you that you  
8 can have any part of the testimony reread that you can't  
9 recall or about which you have conflicting recollections.  
10 You can also have any exhibits with you in the Jury Room.  
11 And by the same token, if any part of my charge has been  
12 unclear or if you want any part of it repeated, I will  
13 be glad to repeat or clarify it if you will send a note  
14 out to me through the marshal stationed at the door of  
15 the Jury Room.

16 In your deliberations you will undoubtedly  
17 start out with many different points of view. The  
18 purpose of your deliberation is to exchange those points  
19 of view. Everyone should participate, speak up, say  
20 what you think.

21 Of course, you can't all talk at once. You  
22 have a jury forelady. The first juror chosen is normally  
23 the foreman or forelady, as the case may be. If she  
24 would prefer in this case not to have that function,  
25 she may say so and you may elect out of your number a

1 gtlm

362

2 different foreman or foreperson and that foreman will run  
3 the jury deliberations as he or she sees fit and can  
4 call on people to speak in order or as they request  
5 recognition.

6 Please keep an open mind during your delibera-  
7 tions. Merely because you have expressed a point of  
8 view at the beginning of your deliberations, don't feel  
9 embarrassed about changing it and above all don't be  
10 stubborn about changing it.

11 Listen carefully and with an open mind to what  
12 your fellow-jurors may say to see whether or not after  
13 consideration of their points of view you can conscientiously  
14 change your own.

15 The objective of the jury deliberation is to  
16 try to reach a single verdict which represents the con-  
17 scientious views of all 12 of the deliberating jurors  
18 if that is at all possible. Try to do that if you can.  
19 If you can't, you can't. Don't feel that you are under  
20 any compulsion to change your point of view that you  
21 conscientiously hold merely because you are outnumbered.

22 I will see counsel at the side bar, please.

23 (At the side bar.)

24 THE COURT: Any suggestions or exceptions?

25 MR. CARROLL: Your Honor, I would like to

1 gtlm

363

2 preserve my exceptions about the point of defrauding that  
3 was contained in the Government's charge yesterday.

4 THE COURT: Yes. Whether intent to defraud the  
5 United States?

6 MR. CARROLL: Yes.

7 Your Honor, you gave a charge which refers to  
8 the reckless disregard, deliberately closing his mind.

9 I don't think there is any evidence in this  
10 case and I except to that part of the charge as inappropriate  
11 in this case.

12 THE COURT: There is some evidence, for example,  
13 he worked in the V.A. Hospital, that there was a facility  
14 for cashing checks in the V.A. Hospital, therefore, that  
15 he should have known it, that is, he should have known  
16 that the payees of the checks would have not the slightest  
17 difficulty in cashing the checks right at the V.A. Hospital.  
18 I think there is some evidence that can go to the jury on  
19 that.

20 MR. CARROLL: I am not sure the jury is clear  
21 at this point whether a unanimous verdict is required.

22 THE COURT: I will say that again.

23 MR. BUCHWALD: Either way.

24 THE COURT: Right.

25 Anything else?

1 gtlm

364

2 MR. CARROTT: That's all I have.

3 (In open court.)

4 THE COURT: I want to emphasize again that  
5 whatever your verdict is, whether guilty or not guilty,  
6 it must be the unanimous verdict of all 12 jurors and  
7 it must be the conscientious vote of all 12 jurors.

8 At this point I believe we can probably excuse  
9 our two alternate jurors. It turned out that we didn't  
10 need you after all.

11 You served a very important function by listening  
12 to all the evidence and being in a stand-by position in  
13 case any of the other jurors had to be excused for any  
14 reason. So I am sure you are just as happy to be spared  
15 the decisions of guilt or innocence of the defendant in  
16 this case.

17 I thank you very much for your time and atten-  
18 tion. You can go back to Room 109.

19 (Two alternate jurors excused.)

20 (A marshal was duly sworn.)

21 THE COURT: You may now retire to the Jury Room  
22 and commence your deliberations.

23 (At 10:30 a.m., the jury retired to commence  
24 their deliberations.)

25 THE COURT: May we agree, gentlemen, that if

2 the jury sends out a note requesting any of the exhibits  
3 in the Jury Room we don't have to get further approval on  
4 the record for that, which means I don't have to come  
5 down to the courtroom for it?

6 MR. CARROLL: Certainly.

7 MR. SIEGEL: That is okay.

8 THE COURT: The deputy clerk will be instructed  
9 to send to the jurors any exhibits they ask for, also a  
10 copy of the information if they request it, without the  
11 necessity of either the Court or counsel or the defendant  
12 being present. He will simply make as a Court exhibit  
13 the note from the jury requesting the exhibits.

14 MR. CARROLL: I would like to be advised,  
15 though, your Honor, if they ask for that.

16 THE COURT: I understand that and he will keep  
17 you fully informed.

18 MR. CARROLL: Thank you.

19 THE COURT: Thank you very much.

20 I think it was well tried on both sides, and  
21 good luck.

22 (At 12:15 p.m., in open court; jury not present.)

23 THE COURT: I understand we have a verdict.

24 (Jury present.)

25 (Jury roll called - all present.)

2 THE CLERK: Madam Forelady, has the jury agreed  
3 upon a verdict?

4 THE FORELADY: Yes, we have.

5 THE CLERK: How do you find Defendant William  
6 R. Goodjoin on Count 1?

7 THE FORELADY: The jury finds the defendant on  
8 Count 1 not guilty.

9 THE CLERK: Count 2?

10 THE FORELADY: The jury finds the defendant  
11 guilty on Count 2.

12 THE CLERK: Members of the jury, please listen  
13 to your verdict as it now stands recorded.

14 You say you find the defendant William R.  
15 Goodjoin not guilty on Count 1 and guilty on Count 2, and  
16 so say you all.

17 THE COURT: I want to thank the members of the  
18 jury for the time you have taken and for the obvious  
19 attention you paid during the trial and for your care in  
20 the deliberation.

21 I know it is an interference with your own  
22 personal affairs to come and serve on a jury and it is  
23 a particular imposition at this season of the year when  
24 all of you, I am sure, have many other things to do and  
25 get ready for your own Christmas if you observe one.

I, William R. Goodjoin, state that I have been advised by SA's Marquez & Hemmer, United States Secret Service, that under the provisions of the Constitution I have certain rights: The absolute right to remain silent, and that anything I say can be used against me in a court of law or any other proceedings; that I have the right to consult with an attorney before answering any questions or making any statements, and that if I cannot afford an attorney and want one, that one can be appointed for me before I say anything; and if I decide to make any statements now, without an attorney present, I have the right to stop the questioning at any time.

Knowing and understanding these rights I hereby make the following statement:

On or about October, 1974, an associate named Eddie Sumpter (Phonetically) approached me and asked me if I wanted to make some money, and, if I could cash a check at Hickey's Bar, 149 W. Kingsbridge Rd., Bronx, New York. I told him that I needed money and I thought I could cash the check. Approximately two days later, Eddie & I were at Hickey's Bar when a person whom I know as Dunn drove up to the bar. He was driven by his brother who is a cripple that receives treatment at the Veteran's Hospital on Kingsbridge Rd. I believe that the brother's name is Dave.

At this time, Dunn entered the bar and handed Eddie an envelop. Eddie then turned away from me, borrowed my pen and wrote something, then he gave me the envelop in which I found a check for twelve hundred and eighty-six (\$1286) dollars made payable to an Ora Brewer. I then took the check to Mike Hickey, the owner of the bar, and asked him to cash it, telling Hickey that the payee asked me to cash the check for him. Hickey refused, at first, because of the amount of the check and asked me who I got it from. I told Hickey that I got it from Eddie who got it from the payee, who is a cripple and could not cash it himself. Hickey then asked Eddie about the check and Eddie told him the same story, however, Hickey still did not want to cash the check. At this time, Eddie went outside to the telephone booth on the street and waited while I told Hickey that I was going to call the payee. I then called Eddie at the phone booth and he talked to Hickey and told him that he was Brewer and that it was all right to cash his check.

Hickey then cashed the check and gave me about \$200 and told me that I could pick up the balance the next morning which I did. After receiving the remaining proceeds of the check from Hickey the following day, I met Eddie late that afternoon and turned the money over to him.

I have read the foregoing statement consisting of 3 pages. I fully understand this statement and it is true and correct to the best of my knowledge. I have made the corrections shown.

I made this statement freely and voluntarily, without any threats, rewards or promises or immunity in return for it.

Subscribed and sworn to before  
me this day 2/7/ 1975  
at New York, New York

Dave D'Marquez  
Signature

Special Agent

Title

FBI  
US

William R. Goodjoin

Eddie Sumpter  
Special Agent

William Goodjoin

AFFIDAVIT

146A

File No. \_\_\_\_\_

United States of America  
Southern District of New York

I William R. Goodjoin state that I have been advised by SA's Marquez & Hammer, United States Secret Service, that under the provisions of the Constitution I have certain rights: The absolute right to remain silent, and that anything I say can be used against me in a court of law or any other proceedings; that I have the right to consult with an attorney before answering any questions or making any statements, and that if I cannot afford an attorney and want one, that one can be appointed for me before I say anything; and if I decide to make any statements now, without an attorney present, I have the right to stop the questioning at any time.

Knowing and understanding these rights I hereby make the following statement:

On or about November, 1974, Eddie met me in the V.A. Hospital on W.Kingsbridge Rd., Bronx, N.Y., at which time he had in his possession a V.A. check worth approximately \$600.00, which he asked me to cash. After several unsuccessful attempts to negotiate the check, I finally deposited it into my savings account at the Knickerbocker Savings and Loan on Boston Rd., Bronx, N.Y. When Eddie asked me about the check, I told him that the bank would not let me make a withdrawal on it until the check cleared five days later, however, I never gave Eddie any of the proceeds of this check and spent the entire amount myself. I also second endorsed this check in my own name when I deposited it, since the payee's name was already on the check when I got it from Eddie.

✓ On or about December, 1974, Eddie again presented me with a V.A. check which he asked me to cash, for about \$260.00. I took this check to O'Leary's Bar located at Boston Rd. and Eastchester Rd., Bronx, N.Y. I owed the bar \$100.00 on my bar bill, so the owner, Dan O'Leary, deducted the \$100.00 returning the difference to me. This check was already endorsed when I received it and I never gave Eddie any of the money from this check either.

On or about January, 1975, I went directly to see Dunn, whom I found out worked in the mail room of the Veteran's Hospital on W. Kingsbridge Rd., Bronx, N.Y., and asked him if he had anything for me. Dunn told me to return after lunch, and, at approximately 2:30PM, I met him in Building "D" of the hospital where he handed me a white envelop containing a V.A. check which was signed in the payee's name and worth about \$300.00. Since I was unable to cash this check in the local bars, I again made a deposit into my bank account at the Knickerbocker Savings and Loan. Later, Dunn questioned me about the check, however, I again kept the entire proceeds of the check for myself.

I have read the foregoing statement consisting of 3 pages. I fully understand this statement and it is true and correct to the best of my knowledge. I have made the corrections shown.

I made this statement freely and voluntarily, without any threats, rewards or promises or immunity in return for it.

Subscribed and sworn to before  
me this day 2/7 1975  
at New York, New York

Dan O'Malley  
Signature

Title

Social Agent

William R. Goodjoin  
Nellie  
1/10/75

John P. Murphy  
General Agent

United States of America  
Southern District of New York

147A

File No. \_\_\_\_\_

William R. Goodjoin state that I have been advised by SA's Marquez & Hemmer, United States Secret Service, that under the provisions of the Constitution I have certain rights: The absolute right to remain silent, and that anything I say can be used against me in a court of law or any other proceedings; that I have the right to consult with an attorney before answering any questions or making any statements, and that if I cannot afford an attorney and want one, that one can be appointed for me before I say anything; and if I decide to make any statements now, without an attorney present, I have the right to stop the questioning at any time.

Knowing and understanding these rights I hereby make the following statement:

On or about February 6th, 1975, I called Dunn at the V.A. Hospital and told him that I was short on money. He asked me if I wanted to cash a check and I stated that I was interested, whereupon, Dunn told me to return to the hospital the next day.

On or about February 7th, 1975, I met Dunn at the V.A. Hospital on W. Kingsbridge Rd., Bronx, N.Y., at which time he advised me that although he did not have a check at present, he would contact me when he got his hands on one.

According to my knowledge, Dunn takes these checks from patients that have died or left the hospital. In addition, Dunn and I have an agreement that if I cash a check, I will receive 40% of the face value of the check while Dunn receives the remaining 60%.

I have read the foregoing statement consisting of 3 pages. I fully understand this statement and it is true and correct to the best of my knowledge. I have made the corrections shown.

I made this statement freely and voluntarily, without any threats, rewards or promises or immunity in return for it.

Subscribed and sworn to before  
me this day 2/7 1975  
at New York, New York

Dominic O'Malley, Jr.  
Signature

Title

Special Agent

William R. Goodjoin  
FBI - New York  
Special Agent  
William R. Goodjoin  
6/1/75

IN ACCT WITH William Goodjoin

No. 2-56691

	DATE	WITHDRAWALS	SAVINGS	DIVIDENDS	BALANCE	TELLER
1	MAR 14'73	100.00			100.00 K 13	
2						
3	MAR 15'73 OK		75.00		175.00 K 20	
4	MAR 15'73	0.00			125.00 K 20	
5	MAR 16'73	50.00			75.00 K 20	
6	MAR 16'73 OK		29.82		104.82 K 13	
7	MAR 19'73	90.00			14.82 K 20 A	
8						
9	MAR 22'73	10.00			4.82 K 20 A	
10						
11	MAR 25'73 OK	3.00			1.82 K 20 A	
12						
13			3.60		5.42 K 20 A	
14						
15	APR 9'73	50.00			6.82 K 20 B	
16	APR 11'73	5.82			1.00 K 20 A	
17	JUN 11 73	350.00	2000.00		1,651.00 A 1	
18						
19			100.00		1,551.00 K 20 A	
20						
	SEP 12 73	100.00			1,501.00 B 2	
22						
	SEP 13 73	600.00			901.00 B 2	

WICKERBOCKER FEDERAL SAVINGS

AND LOAN ASSOCIATION

NAME ON PAGE ONE

2-56691

	DATE	WITHDRAWALS	SAVINGS	DIVIDENDS	BALANCE	TELLER
1	SEP 13 73	350.00			551.00	B 2
2						
3						
4	SEP 13 73	250.00			301.00	K 5
5	SEP 17 73	75.00			226.00	K 7
6	SEP 17 73	90.00			136.00	K 7
7	SEP 18 73	50.00			86.00	A 1
8						
9	SEP 18 73	50.00			36.00	K 2
10	SEP 19 73	20.00			16.00	A 4
11	SEP 26 73	5.00			11.00	A 3
12						
13	SEP 26 73	5.00			6.00	A 4
14	OCT 4 73	5.00			1.00	A 4
15	OCT 23 73	30.00			31.00	A 4LC
16	OCT 24 73	20.00			11.00	A 3
17						
18	OCT 24 73	5.00			6.00	A 2
19	OCT 25 73	5.00			1.00	B 3
20						
21	OCT 26 74	5.00			6.00	S 1
22	OCT 26 74	5.00			1.00	A 4
23						

KICKERBOCKER FEDERAL SAVINGS



BEST COPY AVAILABLE

NAME ON PAGE ONE

2-56691

	DATE	WITHDRAWALS	SAVINGS	DIVIDENDS	BALANCE	TELLER
	OCT 9 74	620.00			621.00	A 2LC
	OCT 18 74	600.00			21.00	A 2
3	OCT 21 74	15.00			6.00	A 2
4	OCT 22 74	5.00			1.00	B 3
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						

NICKERBOCKER FEDERAL SAVINGS



BEST COPY AVAILABLE